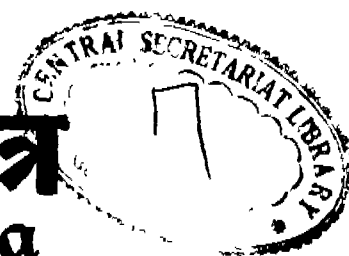




भारत का राजपत्र The Gazette of India



असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 43] नई दिल्ली, बुधवार, अगस्त 30, 1978/भाद्र 8, 1900
No. 43] NEW DELHI, WEDNESDAY, AUGUST 30, 1978/BHADRA 8, 1900

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 30th August, 1978:—

BILL No. 137 OF 1978

A Bill to consolidate and amend the law relating to the registration of trade unions of employees and employers, the rights and liabilities of registered trade unions and settlement of trade union disputes, the conditions of employment of employees, and the investigation and settlement of disputes between employees employed in industrial establishments or undertakings and their employers, and for matters connected therewith or incidental thereto, with a view to promoting healthy industrial relations leading to accelerated economic development and social justice.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Industrial Relations Act, 1978.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for

Short
title,
extent
and com-
mence-
ment.

different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall, in relation to any State, mean the date on which that provision comes into force in such State:

Provided that where any provision of this Act has not been brought into force in any State before the expiry of a period of three years from the date on which this Act receives the assent of the President, such provision shall come into force in such State on the date on which the aforesaid period of three years expires.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(1) "appropriate Government" means,—

(i) in relation to, or in relation to any industrial dispute concerning,—

(a) any establishment wherein any industry is carried on by or under the authority of the Central Government or a railway administration or any undertaking of such establishment;

(b) any establishment wherein is carried on, such controlled industry as may be specified in this behalf by the Central Government, by notification, or any undertaking of such establishment;

(c) any banking company, insurance company or other financial institution (not being a financial institution carrying on the business of conducting chit funds only), having branches or offices in more than one State;

(d) any body corporate operating any social security scheme or service in more than one State;

(e) any corporation which is owned by, or is under the control of, the Central Government and which carries on the business of purchase, procurement, storage, supply or distribution of food grains;

(f) any mine or oilfield, including any pipeline for carrying oil or other mineral;

(g) any establishment of, or wherein is carried on, the business of carriage of passengers or goods by air or any undertaking of such establishment;

(h) any major port as defined in the Indian Ports Act, 1908 or the Board of Trustees of such port constituted under section 3 of the Major Port Trusts Act, 1963, any dock, or any Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948;

15 of 1908.

38 of 1963.

9 of 1948.

(i) the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948, the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948, the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, the Central Board of Trustees and the State Board of Trustees constituted under section 5A and section 5B respectively, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the "Indian Airlines" and "Air-India International" Corporations established under section 3 of the Air Corporations Act, 1953, the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956, the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961, the Agricultural Refinance Corporation established under section 3 of the Agricultural Refinance Corporation Act, 1963, the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, the Food Corporation of India established under section 6, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964, the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971, the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972, a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976, the Export Credit and Guarantee Corporation Limited and the Industrial Reconstruction Corporation of India Limited; or

(j) a Cantonment Board constituted under section 10 of the Cantonments Act, 1924,

the Central Government; and

(ii) in relation to, or in relation to any industrial dispute concerning, any other industrial establishment or undertaking, the State Government:

Provided that where there is any dispute or doubt as to whether the Central Government or the State Government is the appropriate Government in relation to, or in relation to any industrial dispute concerning, any industrial establishment or undertaking, the Central Government, either on a reference made to it by the parties to the dispute or by the State Government concerned or on its own motion, may, if it is of the opinion that the dispute or doubt—

(i) relates to an industrial establishment wherein one or more of the industries referred to in sub-clauses (i) (a) to (i) (g) (both inclusive) and any other industry or industries are carried on; or

(ii) is whether any industry carried on in any establishment is carried on by, or under the authority of, the Central Government,

and after giving the parties concerned a reasonable opportunity of being heard, declare, by notification, whether the Central Government or the State Government is the appropriate Government in relation to, or in relation to any industrial dispute concerning, that industrial establishment or any undertaking of that industrial establishment and such declaration shall be final;

(2) "arbitrator" means an arbitrator or body of arbitrators chosen by the parties to a dispute under sub-section (1) of section 7 or appointed by the Central Government under sub-section (2) of that section and includes the umpire of a body of arbitrators;

(3) "associate union" means a registered trade union of employees certified as an associate union under sub-section (2) of section 60;

(4) "average pay" means the average of the wages (including piece rate earnings) payable to an employee—

(a) in the case of a monthly paid employee and piece rated employee, in the three complete calendar months;

(b) in the case of a weekly paid employee, in the four complete weeks;

(c) in the case of a daily paid employee, in the twelve full working days,

preceding the date with reference to which the average pay becomes payable if the employee had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such average cannot be calculated as aforesaid, the average of the wages payable to the employee during the period he actually worked;

(5) "award" means an interim or final determination of any individual dispute, industrial dispute or trade union dispute or any question relating thereto by any arbitrator, Labour Court, Tribunal or National Commission;

(6) "banking company" means a banking company as defined in section 5 of the Banking Regulation Act, 1949, and includes the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934, the State Bank of India constituted under section 3 of the State Bank of India Act, 1955, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959, the Industrial Development Bank of India established under section 3 of the Industrial Development Bank of India Act, 1964 and a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

10 of 1949.

2 of 1934.

23 of 1955.

38 of 1959.

18 of 1964.

5 of 1970.

(7) "closure" means the permanent closing down of any place of employment or part thereof;

(8) "controlled industry" means any industry the control of which by the Union is declared by any Central Act to be expedient in the public interest;

(9) "employee", except for the purposes of Chapter III, means any person (including an apprentice) employed in any industry, for hire or reward, to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work or who is employed to do any work relating to promotion of sales or any work relating to any profession or any kind of entertainment or recreation, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an individual dispute or industrial dispute (and for no other purpose), includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

45 of 1950.
46 of 1950.
62 of 1957.

(a) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or

23 of 1957.

47 of 1968.

50 of 1968.

(b) who is employed in the police service or is an officer or other employee of a prison, or is an officer or member of the Railway Protection Force constituted under section 3 of the Railway Protection Force Act, 1957, or the Border Security Force constituted under section 4 of the Border Security Force Act, 1968, or the Central Industrial Security Force constituted under section 3 of the Central Industrial Security Force Act, 1968; or

(c) who, being employed in a supervisory capacity, draws wages exceeding one thousand rupees per mensem; or

44 of 1958.

(d) who is employed or engaged as a seaman as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958; or

(e) who is employed mainly in a managerial or administrative capacity.

Explanation.—For the purposes of this clause, a person shall be deemed to be employed in a managerial or administrative capacity in relation to any industrial establishment or undertaking, if he has been empowered to employ, promote, demote, or terminate the services of any employee in such industrial establishment or under-

taking or to change the wages of any such employee or to suspend or dismiss or impose any other punishment on any such employee, or is entitled to take part in policy making process of such industrial establishment or undertaking;

(10) "employees of a local unit" means the employees employed in any local unit;

(11) "employees of a negotiating unit" means the employees employed in an industrial establishment or undertaking or two or more industrial establishments or undertakings or any unit, branch or office or two or more units, branches or offices of the same industrial establishment or undertaking, as the case may be, constituting a negotiating unit;

(12) "employer", except for the purposes of Chapter III, means—

(a) in relation to any industrial establishment or undertaking managed by, or on behalf of, a department of the Central or a State Government, the authority prescribed in that behalf by the Government concerned and where no authority is prescribed the head of the department;

(b) in relation to any industrial establishment or undertaking managed by, or on behalf of, a local authority the chief executive officer of that local authority;

(13) "essential service" means any industry, or part of an industry, specified in the First Schedule;

(14) "executive", in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted;

(15) "individual dispute" means any dispute or difference between an employer and any of his employees in relation to, or arising from, the transfer or promotion of, or the refusal or failure to promote, such employee or the termination of his employment or any punishment (including discharge or dismissal) imposed on such employee and includes any dispute or difference as to the money due to such employee from the employer or as to the amount at which a benefit, which is capable of being computed in terms of money, is to be computed.

Explanation.—A dispute of the nature referred to in this clause shall not cease to be an individual dispute merely because any other employee or employees are interested in that dispute;

(16) "industrial dispute" means any dispute or difference between employers and employees or between employers and employees, or

between employees and employees, which is connected with the employment or non-employment or the terms of employment or conditions of labour, of any person, but does not include an individual dispute or a trade union dispute;

(17) "industry" means any systematic activity carried on by co-operation between an employer and his employees (whether such employees are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not—

(a) any capital has been invested for the purpose of carrying on such activity; or

(b) such activity is carried on with a motive to make any gain or profit;

and includes any activity of the Dock Labour Board constituted under section 5A of the Dock Workers (Regulation of Employment) Act, 1948, but does not include—

9 of 1948.

(i) any domestic service; or

(ii) save for the purposes of Chapter III, any agricultural operation, except where such agricultural operation is carried on in an integrated manner with any other industry, such other industry being the predominant one:

Provided that—

(a) any activity, being a profession practised by any individual or body of individuals; or

(b) any activity carried on by a club or co-operative society or any other like body of individuals,

shall not be deemed to be an industry unless not less than ten persons are employed, by the individual or body of individuals, as the case may be, practising the profession, or by the club or co-operative society or such other like body of individuals, in relation to such profession or activity.

Explanation 1.—Any activity of the Government relatable to the primary functions of the Government shall not be deemed to be an industry.

Explanation 2.—Where several such activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries or only some of the

persons co-operating with the employer in any such activity are employees, then,—

(a) if any unit carrying on any activity, being an industry, is severable, from the other unit or units of such establishment or undertaking, such unit shall be deemed to be an industrial establishment or undertaking;

(b) if any such unit is not so severable, the predominant nature of the activities or the integrated nature of the establishment or undertaking shall be taken into account in determining whether the entire establishment or undertaking is an industrial establishment or undertaking;

(18) "insurance company" means an insurance company as defined in clause (8) of section 2 of the Insurance Act, 1938;

4 of 1938.

(19) "khadi" has the meaning assigned to it by clause (d) of section 2 of the Khadi and Village Industries Commission Act, 1956;

61 of 1956.

(20) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery, natural calamity or for any other reason beyond his control, to give employment to an employee whose name is borne on the muster rolls of his industrial establishment or undertaking and who has not been retrenched.

Explanation 1.—Every employee whose name is borne on the muster rolls of the industrial establishment or undertaking and who presents himself for work at such establishment or undertaking at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the employee instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment, then, he shall be deemed to have been laid-off only for one-half of that day:

Provided that if the employee instead of being given employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowances for that part of the day.

Explanation 2.—Where any such employee as is referred to in the preceding *Explanation* is given employment when he presents himself in the manner provided therein, he shall not be laid-off for that day;

(21) "local unit" means each of—

(a) the two or more industrial establishments or undertakings; or

(b) the two or more units, branches or offices of the same industrial establishment or undertaking,

which have been constituted as a negotiating unit under the provisos to clause (26);

(22) "lock-out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

35 of 1952.

(23) "mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952;

(24) "National Commission" means a National Industrial Relations Commission constituted under section 11;

(25) "negotiating agent" means a registered trade union of employees certified as sole negotiating agent or chief negotiating agent under sub-section (1) of section 60, or a negotiating committee certified as sole negotiating agent under sub-section (7) of section 61;

(26) "negotiating unit" means an industrial establishment or undertaking or, where the industrial establishment or undertaking has more than one unit, branch or office, situated in different places, each such unit, branch or office:

Provided that the appropriate Government may, having regard to the development of trade unionisation, structure of the industrial establishments or undertakings concerned or the nature of any industry and other relevant factors, and, whenever necessary, after consultation with the employers concerned and the registered trade union or trade unions of employees carrying on its or their activities for the benefit of the employees employed in the concerned industrial establishments or undertakings, or units, branches or offices of the same industrial establishment or undertaking, by notification, direct that—

(a) all establishments wherein any industry specified in such notification is carried on, or all undertakings of such industrial establishments, situated in the area specified therein, or

(b) all the units, branches or offices of the same industrial establishment or undertaking situated in different places,

shall be deemed to be one negotiating unit for the purposes of this Act:

Provided further that where the industrial establishments or undertakings or, as the case may be, the units, branches or offices of the same industrial establishment or undertaking proposed to be constituted as a negotiating unit are situated in more than one State the powers of the appropriate Government under the preceding

proviso shall be exercised only by the Central Government and not by a State Government;

(27) "notification" means a notification published in the Official Gazette;

(28) "office-bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;

(29) "prescribed" means prescribed by rules made under this Act;

(30) "registered trade union" means a trade union registered under this Act;

(31) "Registrar" means—

(a) a Registrar of Trade Unions appointed under section 5; and

(b) in relation to any trade union, the Registrar for the State in which the registered office of the trade union is situated;

(32) "retrenchment" means the termination by the employer of the service of an employee for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the employee; or

(b) retirement of the employee on reaching the age of superannuation if the contract of employment between the employer and the employee concerned contains a stipulation in that behalf; or

(c) termination of the service of an employee on the ground of continued ill-health:

Provided that such termination is made after the employee has failed to attend to his duties as such employee on account of ill-health continuously for a period of not less than two years;

(33) "sole negotiating agent" means a registered trade union of employees or a negotiating committee certified as sole negotiating agent under sub-section (1) of section 60 or sub-section (7) of section 61, as the case may be;

(34) "strike" means total or partial cessation of work by a body of persons employed in any industrial establishment or undertaking acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept work or employment;

(35) "terms of employment or conditions of labour" includes—

(a) any matter specified in the Second Schedule or specified in or under the Third Schedule;

(b) contribution paid, or payable by the employer to any provident fund or pension fund or for the benefit of the employees under any law for the time being in force; and

(c) any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control;

(36) "trade union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating relations between employees and employers or between employees and employees or between employers and employers and includes any association of two or more trade unions;

(37) "trade union dispute" means any dispute—

(a) between a trade union and another trade union; or

(b) between a member or two or more members of a trade union and the trade union, or between two or more members of a trade union, relating to registration, certification, administration or management of the affairs of that trade union, including election of office-bearers thereof;

(38) "Tribunal" means an Industrial Tribunal established under section 10;

(39) "unfair practice" means any of the practices specified in the Fourth Schedule;

(40) "village industries" has the meaning assigned to it by clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956;

(41) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes—

(a) such allowances (including dearness allowances) as the employee is for the time being entitled to;

(b) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(c) any travelling concession;

but does not include—

(i) any bonus;

(ii) any contribution paid or payable by the employer to any pension fund, provident fund or life insurance fund or for the benefit of the employee under any law for the time being in force; or

(iii) any gratuity payable on the termination of his service.

CHAPTER II

AUTHORITIES UNDER THE ACT

3 (1) The Central Government may, by notification, appoint a person as the Chief Labour Commissioner who shall exercise such powers and perform such duties, throughout India as are conferred on him by or under this Act or as the Central Government may, by notification, specify from time to time.

Labour
Commis-
sioners

(2) The Central Government may, by notification, appoint such number of persons as it thinks fit to be Joint Chief Labour Commissioners, Deputy Chief Labour Commissioners, Regional Labour Commissioners, Assistant Labour Commissioners and such other officers as it may consider necessary, to assist the Chief Labour Commissioner, in the discharge of his duties.

(3) The State Government may, by notification, appoint a person as the Labour Commissioner for the State, who shall exercise such powers and perform such duties, throughout the State, as are conferred on him by or under this Act or as the State Government may, by notification, specify from time to time.

(4) The State Government may, by notification, appoint such number of persons as it thinks fit to be Additional Labour Commissioners, Joint Labour Commissioners, Deputy Labour Commissioners, Assistant Labour Commissioners and such other officers as it may consider necessary, to assist the State Labour Commissioner in the discharge of his duties.

Concilia-
tion.
Officers.

4. (1) The appropriate Government may, by notification, appoint such number of persons as it thinks fit to be Conciliation Officers charged with the duty of mediating in, and promoting the settlement of, industrial disputes.

(2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Registrar
of Trade
Unions.

5. (1) The State Government may, by notification, appoint a person to be the Registrar of Trade Unions for the State.

(2) The Registrar shall exercise such powers and perform such duties as are conferred on him by or under this Act.

(3) The State Government may, by notification, appoint one or more Additional Registrars of Trade Unions and Deputy Registrars of Trade Unions who shall exercise such powers and perform such duties of the Registrar and within such local limits as the State Government may, by notification, specify from time to time.

(4) Subject to the provisions of any order made by the State Government, where an Additional Registrar of Trade Unions or a Deputy Registrar of Trade Unions exercises and performs the powers and duties of a Registrar in an area within which the registered office of a trade union is situated, the Additional Registrar of Trade Unions or Deputy Registrar of Trade Unions shall be deemed to be the Registrar in relation to the trade union for the purposes of this Act.

Powers of
supervi-
sion of
Chief
Labour
Commis-
sioner and
State
Labour
Commis-
sioner.

6. The officers referred to in sub-section (2) and sub-section (4) of section 3 and section 4 shall, subject to the provisions of this Act and the rules made thereunder, work under the general guidance and supervision of the Chief Labour Commissioner where they are appointed by the Central Government and of the State Labour Commissioner where they are appointed by the State Government.

7. (1) The appropriate Government shall maintain a roster of arbitrators from which the parties to an industrial dispute, individual dispute or trade union dispute may choose an arbitrator or a body of arbitrators for settlement of such dispute.

Arbitrator

Explanation.—Nothing in this sub-section shall be construed as precluding the parties to such dispute from choosing an arbitrator or a member or members of a body of arbitrators from among persons whose name or names is or are not included in such roster.

(2) Notwithstanding anything contained in sub-section (1) where the parties to an industrial dispute or trade union dispute agree to refer such dispute for arbitration and—

(a) in the case of an industrial dispute, the dispute involves, in the opinion of the Central Government, any question of national importance or is of such a nature that industrial establishments or undertakings situated in more than one State are likely to be interested in, or affected by, such dispute;

(b) in the case of a trade union dispute, the dispute involves, in the opinion of the Central Government any question of national importance or one of the parties to the dispute is a registered trade union having offices in more than one State,

the Central Government may, by order, appoint one or more persons (whether or not their names are included in the roster of arbitrators) as an arbitrator or body of arbitrators, as the case may be, for the arbitration of such dispute and such arbitrator or body of arbitrators shall have the same powers and jurisdiction in relation to the industrial dispute or trade union dispute, as the case may be, as if the arbitrator or body of arbitrators has or have been chosen by the parties to the dispute by mutual agreement.

Explanation.—For the removal of doubts it is hereby declared that in the case of an industrial dispute, an order may be made by the Central Government under sub-section (2) notwithstanding that it is not the appropriate Government in relation to the industrial establishment or undertaking with which the dispute is concerned.

8. (1) The appropriate Government may as occasion arises, by notification, constitute a Court of Inquiry for inquiring into any matter connected, or appearing to be connected with, or relevant to, an industrial dispute or a trade union dispute.

Courts of Inquiry.

(2) A Court of Inquiry may consist of one person only or such number of persons, not connected with or interested in the dispute, as the appropriate Government may think fit, and where a Court of Inquiry consists of two or more persons, one of them shall be appointed as the chairman thereof.

(3) A Court of Inquiry having the prescribed quorum may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government intimates the Court of Inquiry that the services of the chairman have ceased to be available, the Court of Inquiry shall not act until a new chairman has been appointed.

(4) The Court of Inquiry shall inquire into such matters as are referred to it by the appropriate Government for inquiry and submit its report to that Government.

Labour
Courts.

9. (1) The appropriate Government may, by notification, establish such number of Labour Courts as it thinks fit and define the local limits of their jurisdiction.

(2) The Labour Court shall have its headquarters at such place as the appropriate Government may, by notification, specify:

Provided that the Labour Court may hold its sittings at such other place or places within its local limits of jurisdiction as it considers necessary.

(3) The appropriate Government may, by notification, appoint such number of persons as it thinks fit to be Presiding Officers of Labour Courts and may, by order, post each of them to preside over a Labour Court or transfer a Presiding Officer from one Labour Court to another Labour Court.

(4) No person shall be qualified for appointment as the Presiding Officer of a Labour Court unless—

(a) he has, for a period of not less than one year, been a District Judge or an Additional District Judge; or

(b) he has been a Presiding Officer of a Labour Court or industrial court constituted under any Central, Provincial or State Act for not less than five years; or

(c) he has been an officer of the Ministry or Department of the Central or State Government dealing with Law or Labour, not below the rank of a Deputy Secretary or equivalent post, for not less than three years; or

(d) he has held a judicial office in India for not less than seven years; or

(e) he has practised as an advocate or attorney for not less than seven years in any court; or

(f) he has, in the opinion of the appropriate Government, adequate experience in industrial relations.

(5) The Labour Court shall have, subject to the other provisions of this Act, jurisdiction to adjudicate industrial disputes relating to any matter specified in the Second Schedule, or individual disputes

(6) The Labour Court shall discharge such other functions as are assigned to it by or under this Act.

Industrial
Tribunals.

10. (1) The appropriate Government may, by notification, establish such number of Industrial Tribunals as it thinks fit.

(2) The Tribunal shall have its headquarters at such place as the appropriate Government may, by notification, specify:

Provided that the Industrial Tribunal may have its sittings at such other place or places as it considers necessary, having regard to the convenience of the parties.

(3) The appropriate Government may, by notification, appoint such number of persons as it thinks fit to be Presiding Officers of Tribunals and may, by order, post each of them to preside over a Tribunal or transfer a Presiding Officer from one Tribunal to another.

(4) No person shall be qualified for appointment as the Presiding Officer of a Tribunal unless—

(a) he is, or has been, or is qualified to be appointed as, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(c) he has been a Presiding Officer of a Labour Court for a period of not less than five years; or

(d) he has been an officer of the Ministry or Department of the Central or State Government dealing with Law or Labour, not below the rank of a Deputy Secretary or equivalent post, for not less than five years; or

(e) he has, in the opinion of the appropriate Government, adequate experience in industrial relations.

(5) The Tribunal shall have, subject to the other provisions of this Act, jurisdiction—

(a) to adjudicate industrial disputes relating to any matter specified in or under the Third Schedule or trade union disputes;

(b) to determine the support for any registered trade union of employees under section 60 and to certify such trade union as sole negotiating agent, chief negotiating agent, associate union or local union; and

(c) to determine any matter relating to the election of a negotiating committee and the certification of such committee as sole negotiating agent.

(6) The Tribunal shall discharge such other functions as are assigned to it by or under this Act.

11. (1) The Central Government may as occasion arises, by notification, constitute a National Industrial Relations Commission—

National
Industrial
Relations
Commis-
sions.

(a) for the adjudication of—

(i) any industrial dispute (whether such dispute relates to any matter specified in the Second Schedule or the Third Schedule) concerning any industrial establishment or undertaking with respect to which the Central Government is the appropriate Government; or

(ii) any industrial dispute (whether such dispute relates to any matter specified in the Second Schedule or the Third Schedule) concerning any industrial establishment or undertaking with respect to which the State Government is the appropriate Government, but such dispute in the opinion of the Central Government,—

(1) involves any question of national importance; or

(2) is of such a nature that industrial establishments or undertakings situated in more than one State are likely to be interested in, or affected by, such dispute; or

(iii) any trade union dispute which, in the opinion of the Central Government, involves any question of national importance or one of the parties to the dispute is a registered trade union having offices in more than one State;

(b) to enquire into and report to, or advise, the Central Government in regard to any matter referred to it; or

(c) to discharge such functions as may be prescribed.

(2) A National Commission shall consist of one person only to be appointed by the Central Government.

(3) No person shall be qualified for appointment as the Presiding Officer of a National Commission unless—

(a) he is, or has been, a Judge of a High Court, or

(b) he is, or has been, the Presiding Officer of a Tribunal for a period of not less than five years; or

(c) he has, in the opinion of the Central Government, adequate experience in industrial relations.

Filling of
vacancies

12. If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of a Labour Court, Tribunal or National Commission or in the office of the chairman or any other member of a Court of Inquiry, then—

(a) in the case of a National Commission, the Central Government; and

(b) in any other case, the appropriate Government,

shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceeding before the Labour Court, Tribunal, National Commission or Court of Inquiry, as the case may be, may be continued from the stage at which the vacancy occurred

Terms
and con-
ditions of
service of
Presiding
Officers
of Labour
Court, etc

13. (1) No person shall be appointed to, or shall continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Commission if he has attained the age of sixty-five years.

(2) The other terms and conditions of service of the Presiding Officer of a Labour Court or Tribunal shall be such as may be prescribed by the appropriate Government and of the Presiding Officer of a National Commission shall be such as may be prescribed by the Central Government.

14. (1) No order of the appropriate Government or of the Central Government, as the case may be, appointing any person as the Presiding Officer of a Labour Court, Tribunal or National Commission or the chairman or any other member of a Court of Inquiry shall be called in question in any manner.

Finality of orders appointing Presiding Officers of Labour Courts, Tribunals and National Commissions and chairman and members of Courts of Inquiry.

(2) No act of, or proceeding before, any Labour Court, Tribunal, National Commission or Court of Inquiry shall be called in question in any manner—

(a) on the ground merely of any defect in the constitution thereof; or

(b) in the case of a Court of Inquiry, on the ground merely of any vacancy therein.

15. Every Labour Court, Tribunal and National Commission shall be deemed to be a civil court for the purposes of sections 345, 346 and 348 of the Code of Criminal Procedure, 1973.

2 of 1974.

Labour Court, etc., to be deemed to be a civil court.

16. Every Conciliation Officer, Registrar, Additional Registrar of Trade Unions or Deputy Registrar of Trade Unions, Presiding Officer of a Labour Court, Tribunal or National Commission, every chairman or any other member of a Court of Inquiry, every arbitrator (where there is only one arbitrator) and every member of a body of arbitrators shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Conciliation Officers, etc., to be deemed to be public servants.

CHAPTER III

TRADE UNIONS

17. In this Chapter—

(a) "employee" means—

(i) any employee as defined in clause (9) of section 2; and

(ii) any person (including an apprentice) employed in any agricultural operation, whether or not such agricultural operation is carried on along with any industry;

(b) "employer" means any person employing any employee referred to in clause (a).

Definitions of "employee" and "employer" for the purposes of this Chapter.

18. (1) A trade union may consist of employees only or employers only or it may be an association of trade unions of employees or, as the case may be, employers only.

Formation of trade unions.

(2) Every trade union shall carry on its management and activities in accordance with the provisions made by or under this Act and its constitution (hereinafter referred to as the rules of the trade union).

(3) No trade union which is not registered under this Act shall be entitled to any rights or privileges under this Act.

Applica-
tion for
registra-
tion.

19. (1) Every application for the registration of a trade union shall be made to the Registrar,—

(a) in the case of a trade union of employers, by not less than ten employers; and

(b) in the case of a trade union of employees, by ten per cent. of the employees employed in an industrial establishment or undertaking or two or more industrial establishments or undertakings or unit, branch or office, or units, branches or offices, of an industrial establishment or undertaking, as the case may be, for the benefit of whom such trade union proposes to carry on its activities, or by ten employees, whichever is higher:

Provided that where ten per cent. of such employees exceeds one hundred employees, it shall be sufficient if the application is made by one hundred of such employees:

Provided further that in the case of industrial establishments or undertakings which are of a seasonal character, such ten per cent. shall be determined with reference to the employee, employed on an average per working day during the season immediately preceding the date on which the application for registration is made.

Explanation.—In the case of a trade union which is an association of trade unions, its membership, for the purpose of this sub-section, shall be deemed to be the aggregate of the membership of each of the trade unions constituting such association of trade unions.

(2) Every application for the registration of a trade union shall be accompanied by—

(a) a statement showing—

(i) the names, occupations and addresses of the persons making the application, including the name and address of the industrial establishment or undertaking, and where the industrial establishment or undertaking has two or more units, branches or offices, the unit, branch or office, wherein such persons are employed;

(ii) the name of the trade union and the address of its head office;

(iii) the title, name, age, address and occupation of each of the office-bearers of the trade union;

(iv) in the case of a trade union, being an association of trade unions, the names, addresses of registered offices and registration numbers of the member trade unions;

(b) three copies of the rules of the trade union together with a copy of the resolution by the members of the trade union adopting such rules;

(c) a copy of the resolution adopted by the members of the trade union authorising the applicants to make the application for registration; and

(d) in the case of a trade union, being an association of trade unions, a copy of the resolution adopted by the members of each of the member trade unions, meeting separately, agreeing to constitute the association of trade unions.

Explanation.—For the purposes of clause (c), “resolution adopted by the members of the trade union” means, in the case of a trade union, being an association of trade unions, the resolution adopted by the members of each of the member trade unions, meeting separately.

(3) Where a trade union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the trade union prepared in such form and containing such particulars as may be prescribed.

(4) Where an application has been made under sub-section (1) for the registration of a trade union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the trade union, some of the applicants, not exceeding one-half of the total number of persons who made the application, have ceased to be members of the trade union or have given notice in writing to the Registrar dissociating themselves from the application.

20. No craft or category wise trade union shall be registered under this Act.

Prohibition of registration of craft or category wise trade union.

21. (1) The Registrar may call for further information from the persons who have made the application for registration for the purpose of satisfying himself that any application for registration of the trade union complies with the provisions of section 19, and that the registration of the trade union is not prohibited by section 20, and may refuse to register the trade union until such information is supplied.

Power to call for further particulars and to require alteration of name

(2) If the name under which a trade union is proposed to be registered is identical with that by which any other existing trade union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either trade union, the Registrar shall require the persons applying for registration to alter the name of the trade union stated in the application, and shall refuse to register the trade union until such alteration has been made.

22. A trade union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules of the trade union provide for the following matters, namely:—

Constitution of executive and provisions to be contained in the rules of a trade union.

(a) the name of the trade union;

(b) the whole of the objects for which the trade union has been established;

(c) the whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(d) the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office-bearers and members of the trade union;

(e) the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the industrial establishment or undertaking or industrial establishments or undertakings or unit, branch or office, or units, branches or offices, of an industrial establishment or undertaking, as the case may be, with which the trade union is connected, and also the admission of such number of honorary or temporary members, who are not such employees, as are permitted under section 34 to be office-bearers to form the executive of the trade union;

(f) the payment of a subscription by members of the trade union;

(g) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;

(h) the annual general body meeting of the members of the trade union, the business to be transacted at such meeting, including the election of office-bearers of the trade union;

(i) the manner in which the members of the executive and the other office-bearers of the trade union shall be elected annually and removed and filling of casual vacancies;

(j) the safe custody of the funds of the trade union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the trade union;

(k) the manner in which the rules shall be amended, varied or rescinded; and

(l) the manner in which the trade union may be dissolved.

Registra-
tion of
trade
union.

23. (1) The Registrar on the receipt of an application for registration of a trade union shall, after making such enquiries and collecting such further information as may be necessary, pass order within sixty days from the date of the receipt of the application either granting or refusing to grant registration of the trade union and communicate the order to the applicant;

Provided that where the Registrar refuses to grant registration to a trade union, he shall state the reasons therefor in the order refusing to grant registration.

(2) When the Registrar grants registration to the trade union, he shall enter in a register, to be maintained in such form as may be prescribed, the particulars relating to the trade union contained in the statement referred to in clause (a) of sub-section (2) of section 19 accompanying the application for registration.

24. (1) The Registrar, on registering a trade union under this Act, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been registered under this Act.

Certificate of registration.

(2) A certificate of registration issued under sub-section (1) shall be valid for the whole of India.

25. (1) Every trade union registered under the Trade Unions Act, 1926, or any other law, before the commencement of this Act, shall until the expiry of six months from such commencement be deemed to be a registered trade union for the purposes of this Act.

Fresh registration of trade unions registered under Act 16 of 1926.

16 of 1926.

(2) Every trade union registered under the Trade Unions Act, 1926, or any other law, before the commencement of this Act, may apply for registration under this Act and where such trade union does not make any such application it shall, on the expiry of six months from the commencement of this Act, be deemed to be not a registered trade union for the purposes of this Act:

Provided that the Registrar may, after he has received an application for the fresh registration of the trade union under this sub-section, direct that the trade union shall be deemed to be a registered trade union under this Act until he takes a final decision on such application granting or refusing to grant registration to the trade union under this Act.

16 of 1926

(3) The Registrar shall, before the expiry of three months from the commencement of this Act, serve on every craft or category wise trade union registered under the Trade Unions Act, 1926, or any other law, before the commencement of this Act, a notice requiring such trade union—

(a) to amalgamate with a trade union registered or deemed to be registered under this Act; or

(b) to allow membership to all categories of employees, within a period of three months from the service of such notice on the trade union.

(4) Where any craft or category wise trade union fails or refuses to comply with a notice under sub-section (3) within the period specified therefor in that sub-section, it shall cease to be a registered trade union for the purposes of this Act.

26. (1) A certificate of registration of a trade union may be cancelled by the Registrar—

Cancellation of registration.

(a) on an application made in that behalf in the prescribed form by the trade union concerned and after verification of the facts stated in the application in such manner as may be prescribed;

(b) if the trade union wilfully fails to maintain accounts or to submit annual return within the prescribed period;

(c) if the annual return submitted by it is false or defective in material particulars and the defects are not rectified within the prescribed period;

(d) if the certificate of registration has been obtained by fraud or mistake;

(e) if the trade union has ceased to exist;

(f) if the trade union has wilfully and after notice from the Registrar contravened any provision of this Act or rules made thereunder;

(g) if the trade union had made, or allowed to continue, any rules of the trade union which are inconsistent with the provisions of this Act or has rescinded any of its rules providing for any matter, provision for which is required to be made by section 22;

(h) if the trade union has not held annual elections to elect its office-bearers before the expiry of such date as may be prescribed; or

(i) if the trade union contravenes its rules:

Provided that not less than sixty days' previous notice in writing specifying the grounds on which it is proposed to cancel the certificate of registration shall be given by the Registrar to the trade union before the certificate of registration is cancelled otherwise than on the application of the trade union.

(2) A certificate of registration of a trade union shall be cancelled by the Registrar where a Labour Court or a Tribunal recommends the cancellation of such registration under sub-section (4) of section 93 or sub-section (8) of section 108, as the case may be.

(3) While cancelling the certificate of registration of a trade union the Registrar shall record the reasons for doing so and communicate the same in writing to the trade union concerned.

Appeal
against
non-regis-
tration
and can-
cellation
of regis-
tration.

27. (1) Any person aggrieved by the refusal of the Registrar to grant the application for registration of a trade union under sub-section (1) of section 23 or by the cancellation of a certificate of registration under sub-section (1) of section 26 may, within such period as may be prescribed, appeal to the Tribunal specially authorised in this behalf in the prescribed manner.

(2) The Tribunal may, after giving the parties concerned an opportunity of being heard, dismiss the appeal or pass an order directing the Registrar to register the trade union and to issue a certificate of registration under section 24 or setting aside the order of cancellation of the certificate of registration, as the case may be, and a copy of the order shall be forwarded to the Registrar.

(3) The order of the Tribunal shall be final and the Registrar shall comply with such order within a period of thirty days from the date of the order.

Re-regis-
tration of
a trade
union.

28. A trade union whose certificate of registration has been cancelled, may apply for re-registration after the expiry of a period of six months from the date of the last cancellation of the certificate of registration.

Register-
ed office.

29. (1) All communications and notices to a registered trade union may be addressed to its registered office which shall be the address of the head office of the trade union as entered in the register referred to in sub-section (2) of section 23.

(2) Notice in writing of any change in the address of the registered office of the trade union shall be given within fourteen days of such change to the Registrar, and such other authorities as may be prescribed, and the changed address shall be recorded in the register referred to in sub-section (2) of section 23.

30. (1) The subscription payable by the members of a trade union shall be—

Member-
ship fee
and its
mode of
collection.

(i) in the case of a trade union of persons employed in agriculture or agricultural operations, not less than twenty-five paise per month per member; and

(ii) in other cases, not less than one rupee per month per member.

(2) Where a trade union, in accordance with its rules, resolves to that effect and the employees who are members of such trade union execute in favour of the employer a written authorisation in that behalf, the membership fee shall be deducted from the wages of the employees by the employer and paid over to the trade union concerned in the prescribed manner.

31. Every registered trade union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Incorpo-
ration of
registered
trade
unions.

32. The following Acts, namely:—

21 of 1860.

(a) the Societies Registration Act, 1860,

2 of 1912.

(b) the Co-operative Societies Act, 1912, and

1 of 1956.

(c) the Companies Act, 1956,

Certain
Acts not
to apply
to regis-
tered
trade
unions.

shall not apply to any registered trade union and the registration of any such trade union under any such Act shall be void.

33. A person shall be disqualified for being chosen as, and for being an office-bearer of a registered trade union, if—

Disquali-
fications
for being
office-
bearer
of trade
unions.

(i) he has not attained the age of eighteen years;

(ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release after undergoing such imprisonment;

(iii) he is already office-bearer of not less than four trade unions; and

(iv) a Labour Court has directed, under sub-section (2) of section 93, that he shall be disqualified for being chosen as, or for being, an office-bearer of a trade union, so long as such order is in force,

Proportion of office-bearers to be connected with the industry.

34. (1) In the case of a trade union of employees carrying on its activities for the benefit of employees employed in one industrial establishment or undertaking only, the number of office-bearers of such trade union who are not persons actually employed in such industrial establishment or undertaking, shall not be more than two.

(2) In the case of a trade union of employees carrying on its activities for the benefit of employees employed in two or more industrial establishments or undertakings, not less than three-fourths of the total number of the office-bearers of such trade union shall be employees actually employed in any of the industrial establishments or undertakings with which the trade union is connected.

(3) In the case of a trade union of employers not less than three-fourths of the total number of the office-bearers of such trade union shall be employers in relation to the industrial establishments or undertakings with which the trade union is connected.

Explanation.—For the purposes of this section an ex-employee of an industrial establishment or undertaking shall be deemed to be a person who is actually employed in such industrial establishment or undertaking.

Declaration of assets by office-bearers.

35. Every office-bearer of a trade union shall file a statement of his assets and liabilities every year, on or before such date as may be prescribed, with the Registrar and such statement shall be open for inspection by any employee or, as the case may be, employer, who is a member of the trade union.

Change of name.

36. Any registered trade union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 38, change its name.

Amalgamation of trade unions.

37. Any two or more registered trade unions which are not associations of trade unions or two or more associations of trade unions may amalgamate together as one trade union or one association of trade unions, as the case may be, with or without dissolution or division of the assets and liabilities of such trade unions or associations of trade unions or either or any of them if the votes of at least one-half of the members of each or every such trade union (including, in the case of amalgamation of two or more associations of trade unions, the members of the trade unions which are members of such associations of trade unions) entitled to vote are recorded and at least sixty per cent of the votes recorded are in favour of such amalgamation.

Notice of change of name or amalgamation.

38. (1) Notice in writing of every change of name and of every amalgamation shall be signed—

(a) where the registered trade union changing its name is not an association of trade unions or the registered trade unions amalgamating are not associations of trade unions,—

(i) in the case of a change of name, by the Secretary and ten members of the registered trade union changing its name; and

(ii) in the case of an amalgamation, by the Secretary, and ten members, of each of the registered trade unions amalgamating;

(b) where the registered trade union changing its name is an association of trade unions or the registered trade unions amalgamating are associations of trade unions—

(i) in the case of a change of name, by the Secretary of such association of trade unions and by not less than fifty-one per cent. of the total number of secretaries of the trade unions which are members of such association of trade unions; and

(ii) in the case of an amalgamation, by the secretaries of the associations of trade unions amalgamating and by not less than fifty-one per cent. of the secretaries of the trade unions which are members of such associations of trade unions amalgamating,

and shall be forwarded to the Registrar and, in the case of an amalgamation of trade unions, where the registered office of the amalgamated trade union is situated in a different State, to the Registrar of such State:

Provided that in a case referred to in clause (a), if the total number of members of the registered trade union whose name is changed or any of the registered trade unions amalgamating, excluding the secretary, is less than ten, the notice may be signed only by the secretary and all the members of the trade union.

(2) Subject to the provisions of sub-section (2) of section 21, the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in sub-section (2) of section 23, and the change of name shall have effect from the date of such registration.

(3) The Registrar, within the local limits of whose jurisdiction the registered office of the amalgamated trade union is situated, shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the registration of the trade union formed thereby is not prohibited by section 20 and it is not disentitled to registration under section 22, register such trade union in the manner provided in section 23 and the amalgamation shall have effect from the date of such registration.

39. (1) The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

Effects
of change
of name
and amal-
gamation

(2) An amalgamation of two or more registered trade unions shall not prejudice any right of any of such trade unions or any right of a creditor of any of them.

Dissolu-
tion.

40. (1) When a registered trade union is dissolved, notice in writing of the dissolution shall be signed,—

(a) where such trade union is not an association of trade unions, by the Secretary and ten members thereof; and

(b) where such trade union is an association of trade unions, the secretary of such association of trade unions and the secretaries of not less than fifty-one per cent. of the total number of the trade unions which are members of such association,

and shall, within fourteen days of the dissolution, be sent to the Registrar, and if the Registrar is satisfied that the dissolution has been effected in accordance with the rules of the trade union, he shall make an entry to that effect in the register referred to in sub-section (2) of section 23 and the dissolution shall have effect from the date on which such entry is made:

Provided that in a case referred to in clause (a), where the total number of members of a trade union, excluding the Secretary, is less than ten, the notice may be signed only by the Secretary and all the members of the trade union.

(2) Where the dissolution of a registered trade union has been entered in the register referred to in sub-section (2) of section 23 and the rules of the trade union do not provide for the distribution of the funds of the trade union on dissolution, the Registrar shall divide the funds amongst the members thereof in such manner as may be prescribed.

Returns.

41. (1) Every registered trade union shall forward annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of such registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union, existing on such 31st day of December.

(2) The general statement shall be prepared in such form, and shall contain such particulars, as may be prescribed.

(3) Together with the general statement referred to in sub-section (1), every registered trade union shall forward to the Registrar a statement showing all changes of office-bearers made by the trade union during the year to which such general statement relates, along with a copy of the rules of the trade union corrected up to the date of despatch thereof to the Registrar.

(4) A copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration.

(5) For the purpose of examining the documents referred to in sub-sections (1), (3) and (4), the Registrar, or any officer authorised by him,

by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers and other documents, relating to a trade union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometers from the registered office of such trade union.

42. (1) Where any application to be made, notice to be given or anything to be done (including the signing of any application or notice) under this Chapter is required or allowed to be made, given or done by a member of a trade union and such trade union is a trade union of employers, such application, notice or thing shall, in the case of a member, being a company or other body corporate, be made given or done, as the case may be, by the secretary of, or any other officer specially authorised in this behalf by, the company or other body corporate.

Special provisions in regard to trade union of employers.

(2) Where a member of a trade union of employers is a company or other body corporate, the secretary of, or any other officer specially authorised in this behalf by, the company or other body corporate shall be deemed to be an employer in relation to an industrial establishment or undertaking with which the trade union is connected for the purposes of section 34.

43. (1) Where there is—

(a) a dispute relating to,—

(i) the election of an office-bearer or the disqualification of any person for being chosen as, or for being, an office-bearer of a registered trade union; or

(ii) whether or not any person is, or has ceased to be, an office-bearer, or a member, of a registered trade union, including any dispute relating to wrongful removal or expulsion of any such office-bearer or member from his office or membership of such trade union, as the case may be; or

(iii) the property, including account books, of any registered trade union; or

(b) any other trade union dispute,

Adjudication of trade union disputes.

an application may be made in the prescribed manner to the Tribunal specially authorised in this behalf for the adjudication of the dispute,—

(A) where the dispute is in respect of a registered trade union which is an association of trade unions, by any person who is a member of any of the trade unions, which is a member of the association; or

(B) where the dispute is in respect of a registered trade union which is not an association of trade unions, by any person who is a member of the trade union,

within such period as may be prescribed or the Government of the State wherein the registered office of the trade union is situated may refer such dispute to such Tribunal for adjudication.

(2) Notwithstanding anything contained in sub-section (1), where, in the opinion of the Central Government, any dispute referred to therein involves any question of national importance or any of the parties to the dispute is a registered trade union having offices in more than one State, that Government may refer such dispute to a National Commission for adjudication and on such reference being made, sub-section (6) of section 104 shall apply in relation to such dispute in the same manner as it applies in relation to an industrial dispute which has been referred to a National Commission for adjudication.

(3) The Tribunal to which an application is made or a dispute is referred for adjudication under sub-section (1), or the National Commission to which a dispute is referred for adjudication under sub-section (2), shall have the power to issue such directions or pass such orders, as it thinks fit, pending the adjudication of the dispute.

(4) The Tribunal or National Commission, as the case may be, shall, after hearing the parties to the dispute and enquiring into the dispute in the prescribed manner, adjudicate the dispute and pass such award as it thinks just and proper in the case, including an order setting aside the election of an office-bearer, or declaring that any person is not or has ceased to be an office-bearer of a trade union and directing the holding of election for choosing an office-bearer.

(5) The award of the Tribunal or the National Commission, as the case may be, under sub-section (4) shall be final.

(6) No civil court shall entertain any suit or other proceeding in relation to any dispute referred to in sub-section (1).

(7) Save as aforesaid, the Tribunal or the National Commission, as the case may be, shall, in adjudicating disputes under this section, exercise the same powers and follow the same procedure as it exercises or follows while adjudicating an industrial dispute under this Act.

Objects
on which
general
funds
may be
spent.

44. The general funds of a registered trade union shall not be spent on any object other than the following, namely:—

(a) the payment of salaries and allowances to the office-bearers of the trade union and the expenses incurred by them in the discharge of their duties;

(b) the payment of expenses for the administration of the trade union, including audit of the accounts of the general funds of the trade union;

(c) the prosecution or defence of any legal proceeding to which the trade union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the trade union as such or, in the case of a registered trade union of employees, of any member of the trade union against his employer or, in the case of a registered trade union of employers, of any employer against his employees;

(d) the conduct of individual, industrial or trade union disputes on behalf of the trade union or any member thereof or for compensation of members for loss arising out of such dispute;

(e) allowances to members thereof or their dependents on account of death, old age, sickness, accident or unemployment of such members;

(f) the issue of, or the undertaking of liability under, policies of assurance on the lives of members thereof or against their sickness, accident or unemployment;

(g) the provision of educational, social or religious benefits for members thereof (including payment to the heirs of a deceased member of expenses of funeral or religious ceremonies of such deceased member) or for the dependents of such members;

(h) the publication of a periodical mainly concerning matters in relation to trade union activities and activities of employers or employees or both;

(i) the payment, in furtherance of any of the objects on which the general funds of the trade union may be spent, of contributions to any cause intended to benefit employees or employers, as the case may be, in general, provided that the expenditure towards such payment in any financial year shall not, at any time during that year be in excess of one-fourth of the aggregate gross income which has up to that time accrued to the general funds of the trade union during that year and of the balance at the credit of those funds at the commencement of that year; and

(j) any other object specified by the State Government, by notification, subject to such conditions as may be specified therein.

45. (1) A registered trade union may constitute a separate fund, which shall consist of money separately realised or paid to that fund, from which payments may be made for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

Constitution of a separate fund for political purposes.

(2) The objects referred to in sub-section (1) are—

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or of any local authority; or

(d) the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution or for any local authority; or

(e) the holding of political meeting of any kind, or the distribution of political literature or political documents of any kind.

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1) and a member who does not contribute to the said fund shall not be excluded from any benefit of the registered trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of such trade union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to such trade union.

(4) The provisions of this section shall, in so far as it relates to payment of contributions by members of a registered trade union to a fund constituted by such trade union under sub-section (1), be subject to the provisions of section 293A of the Companies Act, 1956.

1 of 1956.

Right to
inspect
books of
trade
unions.

46. The account books of a registered trade union and the list of members thereof shall be open to inspection by any office-bearer or member of such trade union at such times as may be specified in the rules of the trade union.

Trade
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47. (1) A registered trade union of employers may enter into a settlement with a negotiating agent in the course of negotiations under section 97 or in the course of conciliation proceedings under section 98 or may enter into an arbitration agreement under section 100 and where a registered trade union of employers enters into such agreement, the agreement and, where such agreement is an arbitration agreement, the arbitration award shall, subject to the other provisions of this Act, be binding on every member of such trade union of employers.

(2) Where any registered trade union of employers is a party to any adjudication proceedings before the Labour Court, Tribunal or National Commission, the award of such Labour Court, Tribunal or National Commission, as the case may be, shall, subject to the other provisions of this Act, be binding on all the members of such trade union of employers.

Explanation.—For the purposes of this section, member of a registered trade union of employers includes any such member who resigns or otherwise relinquishes the membership, or otherwise ceases to be a member, of such trade union after any agreement referred to in sub-section (1) is entered into or after such trade union has been made a party to any adjudication proceedings referred to in sub-section (2).

Enforce
ability of
agree-
ments.

48. No civil court shall entertain any suit or other legal proceeding instituted for the express purpose of enforcing, or recovering damages for breach of, any of the following agreements, namely:—

(a) any agreement among the members of a registered trade union as such, concerning the conditions on which any members of such trade union shall or shall not sell their goods, transact business, employ or be employed; or

(b) any agreement for the payment by any person of any subscription or penalty to a registered trade union; or

(c) any agreement for the application of the funds of a registered trade union—

(i) to provide benefits to members; or

(ii) to make contributions to any employee or employer, as the case may be, who is not a member of such trade union, in consideration of such employee or employer acting in conformity with the rules or resolutions of such trade union; or

(iii) to pay any fine imposed upon any member, or upon any office-bearer (not being a member), of such trade union, by sentence of a court of law; or

(d) any agreement made between one registered trade union and another; or

(e) any agreement between a registered trade union of employees [whether or not such trade union has been certified as a negotiating agent under sub-section (1) of section 60 or as a local union under sub-section (3) of that section] and an employer or a group of employers or registered trade union of employers; or

(f) any agreement to secure the performance of any of the agreements aforesaid.

49. (1) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of an industrial dispute or trade union dispute or individual dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he desires.

Immunity from civil suit in certain cases.

(2) A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of an industrial dispute or trade union dispute or individual dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union.

50. No employee, who is a member of a registered trade union of employees, shall be discriminated against, directly or indirectly, in any of the matters relating to his conditions of service for the reason that he is a member of such trade union of employees or continues to remain as such member.

Discrimination against members of registered trade union of employees prohibited.

Office-bearers or members of registered trade unions not liable for criminal conspiracy in certain cases.

51. No office-bearer or member of a registered trade union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section 44 unless the agreement is an agreement to commit an offence.

45 of 1860.

CHAPTER IV

NEGOTIATING AGENT

Sole and chief negotiating agents, associate union and local union.

52. (1) A registered trade union of employees may, subject to the other provisions contained in this Chapter, be certified as the sole negotiating agent in relation to the employees of a negotiating unit if it has the support of not less than sixty-five per cent. of such employees.

(2) A registered trade union of employees may, subject to the other provisions contained in this Chapter, be certified as the chief negotiating agent in relation to the employees of a negotiating unit if it has the support of more than fifty per cent., but less than sixty-five per cent., of such employees.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), where there is only one registered trade union of employees carrying on its activities for the benefit of the employees of a negotiating unit and it has the support of not less than forty per cent. of such employees, it may, subject to the other provisions contained in this Chapter, be certified as the sole negotiating agent in relation to such employees.

(4) Where there are two or more registered trade unions of employees carrying on their activities for the benefit of the employees of a negotiating unit, and one of such trade unions of employees is certified as the chief negotiating agent in relation to such employees, such of the other registered trade unions of employees having the support of not less than twenty per cent. of such employees shall, subject to the other provisions contained in this Chapter, be certified as associate union or associate unions in relation to such employees.

(5) Where a registered trade union of employees or a negotiating committee referred to in sub-section (6) has been certified as the sole negotiating agent in relation to the employees employed in two or more industrial establishments or undertakings or two or more units, branches or offices of the same industrial establishment or undertaking constituting a negotiating unit, any other registered trade union of employees carrying on its activities for the benefit of the employees of any of the local units constituting such negotiating unit may, subject to the other provisions contained in this Chapter, be certified as a local union in relation to the employees last mentioned, if such trade union of employees has the support of not less than forty per cent. of such employees and is the trade union of employees (not being the registered trade union of employees certified as sole negotiating agent) having the support of the maximum number of employees of such local unit.

(6) Where there is no registered trade union of employees carrying on its activities for the benefit of the employees of a negotiating unit or no such trade union is entitled to be certified as the sole negotiating agent or chief negotiating agent in relation to such employees, a committee to be called a negotiating committee, shall be elected by such employees in such manner as hereinafter provided to discharge the functions of a sole negotiating agent.

53. (1) Where—

(a) the support for a registered trade union of employees is proposed to be determined for the purpose of certifying it as sole negotiating agent or chief negotiating agent under sub-section (1) of section 60 or an election is to be conducted to choose the chairman or other members of a negotiating committee under section 61; or

(b) the support for a registered trade union of employees is proposed to be determined for the purpose of certifying it as local union under sub-section (3) of section 60,

the Tribunal shall notify,—

(i) in the case referred to in clause (a), on the notice board or notice boards of the industrial establishment or undertaking or industrial establishments or undertakings or the unit, branch or office or the units, branches or offices of the same industrial establishment or undertaking, as the case may be, constituting a negotiating unit; or

(ii) in the case referred to in clause (b), on the notice board of the local unit; and

(iii) in either case in such other manner as may be prescribed, its intention to determine such support or to conduct such election, as the case may be, and the date, time and manner and such other particulars relating to such determination or election, as may be prescribed.

(2) All employees employed in the negotiating unit or the local unit, as the case may be, and who—

(a) have been so employed (whether continuously or intermittently) for not less than ninety days during a period of one hundred and eighty days immediately preceding the date on which the intention to determine the support of the employees for such trade union or to conduct the election to the negotiating committee, as the case may be, is notified under clause (i) or clause (ii) of sub-section (1); and

(b) have completed the age of eighteen years on such date,

shall be entitled to take part in such determination of support for such trade union of employees or election to the negotiating committee, as the case may be.

(3) Where the notice referred to in sub-section (1) is required by that sub-section to be notified on more than one notice board the date on which it is notified on the last notice board shall, for the purposes of sub-section (2), be deemed to be the date on which such notice is notified.

Qualifications for taking part in the determination of support of a trade union of employees or for voting in election to choose negotiating committee.

Appli-
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certifica-
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ing agent.

54. (1) A registered trade union of employees may apply for certification as negotiating agent in relation to the employees of a negotiating unit and such application shall state whether it claims to be certified as sole negotiating agent or chief negotiating agent.

(2) Save as otherwise provided in sub-section (4), the application under sub-section (1) shall be made—

(a) where a negotiating unit has been constituted by the Central Government under the second proviso to clause (26) of section 2 and the application is for certification of a registered trade union of employees as negotiating agent in relation to the employees of such negotiating unit, to the Central Government;

(b) in other cases, to the appropriate Government.

(3) Where a registered trade union of employees applies for certification as negotiating agent and such certification is in relation to the employees employed in—

(a) all the establishments wherein is carried on the same industry or all undertakings of such industrial establishments, situated in the same area; or

(b) all the units, branches or offices of the same industrial establishment or undertaking situated in different places,

and such industrial establishments or undertakings, or units, branches or offices of the same industrial establishment or undertaking, have not been constituted as a negotiating unit under the provisos to clause (26) of section 2, the applicant shall specify in the application the prescribed particulars in respect of such industrial establishments or undertakings, or units, branches or offices of the same industrial establishment or undertaking, and such application shall be made—

(a) where such industrial establishments or undertakings, or units, branches or offices of the same industrial establishment or undertaking are situated in more than one State, to the Central Government; and

(b) in other cases, to the appropriate Government.

(4) Where the period for which any registered trade union of employees was certified as the negotiating agent in relation to the employees of two or more industrial establishments or undertakings, or two or more units, branches or offices of the same industrial establishment or undertaking, constituting a negotiating unit, has expired under sub-section (1) of section 64 or where such certificate is cancelled under sub-section (2), or deemed to be cancelled under sub-section (3), of that section, any other registered trade union of employees, or the registered trade union of employees the period of whose certification as negotiating agent has expired, may apply for the re-constitution of the negotiating unit and certifying such registered trade union of employees as the negotiating agent in relation to the employees of the re-constituted negotiating unit and the provisions of sub-section (3) shall, so far as may be, apply in relation to such application.

(5) Where any registered trade union of employees has been certified as sole negotiating agent in relation to the employees of a negotiating unit and such negotiating unit consists of two or more industrial establishments or undertakings or two or more units, branches or offices of the same industrial establishment or undertaking, any other registered trade union of employees may apply, to the Central Government or the appropriate Government, as the case may be, to whom the trade union first mentioned applied for certification as such sole negotiating agent, for certification as local union in relation to the employees of any of the local units constituting such negotiating unit.

55. (1) Every application by a registered trade union of employees, under sub-section (1) of section 54, for certification as negotiating agent in relation to the employees of a negotiating unit shall state whether any other registered trade union of employees was certified as the negotiating agent in relation to such employees and shall contain such particulars as may be prescribed in respect of such trade union.

(2) Every application by a registered trade union of employees, under sub-section (5) of section 54, for certification as a local union in relation to the employees of a local unit shall—

(a) contain such particulars as may be prescribed in respect of the registered trade union of employees certified as sole negotiating agent in relation to the employees of the negotiating unit including the employees of such local unit; and

(b) state whether any other registered trade union of employees was certified as local union in relation to such employees and if so also contain such particulars as may be prescribed in respect of such trade union.

(3) Every application by a registered trade union of employees for certification as negotiating agent, or local union shall, contain such other particulars, be in such form and be accompanied by such fee as may be prescribed.

56. (1) No application for the certification of a registered trade union of employees—

(a) as negotiating agent in relation to the employees of a negotiating unit; or

(b) as a local union in relation to the employees of a local unit,

shall be entertained by the Central Government or the appropriate Government, as the case may be, if—

(i) in the case referred to in clause (a), any other registered trade union of employees or a negotiating committee has been certified as negotiating agent in relation to the employees referred to therein; or

(ii) in the case referred to in clause (b), any other registered trade union of employees has been certified as local union in relation to the employees referred to therein:

Provided that such application may be entertained if a period of two years has expired after the date of certification of the other registered trade union of employees or negotiating committee as negotiating agent or other registered trade union of employees as local union, as the case may be, or such certification as negotiating agent or local union

Particulars which an application for certification as negotiating agent or local union shall contain.

Bar against application by registered trade union of employees for certification as negotiating agent, associate union or local union in certain cases.

has been cancelled under sub-section (2) of section 64 or is deemed to be cancelled under sub-section (3) of that section.

(2) A registered trade union of employees shall not be eligible to apply for certification as negotiating agent, associate union or local union—

(a) if it has not been functioning as a registered trade union—

(i) where the application is for certification as local union, for the benefit of the employees of the local unit concerned; or

(ii) in other cases for the benefit of the employees of the negotiating unit concerned,

for a period of at least one year immediately preceding the date of making such application; or

(b) if there is a finding of a Tribunal that such trade union of employees has indulged in an unfair practice and a period of not less than six months has not elapsed after the date of such finding.

Refere-
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applica-
tion to
Tribunal
for certi-
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negotiat-
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or local
union.

57. (1) The Central Government, or the appropriate Government, as the case may be, shall, after giving the applicant and any other registered trade union of employees which is desirous of being heard, a reasonable opportunity of being heard and after making such further enquiry as it deems fit, entertain the application if it complies with the provisions of section 55 and is not barred by sub-section (1) of section 56 and the registered trade union of employees is not ineligible to apply for certification as negotiating agent or local union, as the case may be, under sub-section (2) of section 56.

(2) The Central Government or the appropriate Government, as the case may be, on entertaining an application by a registered trade union of employees for certification as negotiating agent, shall after giving the applicant and any other registered trade union of employees, which is desirous of being heard, and the employer or employers concerned a reasonable opportunity of being heard decide whether having regard to the matters referred to in the first proviso to clause (26) of section 2 it is necessary or expedient to constitute a negotiating unit consisting of two or more industrial establishments or undertakings or two or more units, branches or offices of the same industrial establishment or undertaking.

(3) Where the Central Government or the appropriate Government, as the case may be, is of the opinion that having regard to the matters referred to in the first proviso to clause (26) of section 2, it is not necessary or expedient to constitute a negotiating unit as referred to in sub-section (2), that Government shall—

(a) where the application referred to in sub-section (2) has been made to the Central Government and that Government is not the appropriate Government, return such application for presentation to the State Government; or

(b) where such application has been made to the appropriate Government, refer it to the Tribunal for certifying a negotiating agent.

(4) Where the Central Government or the appropriate Government, as the case may be, is of the opinion that having regard to the matters referred to in the first proviso to clause (26) of section 2 it is necessary or expedient to constitute a negotiating unit consisting of two or more industrial establishments or undertakings or two or more units, branches or offices of the same industrial establishment or undertaking—

(a) if such negotiating unit has already been constituted, refer the application referred to in sub-section (2) to the Tribunal for certifying a negotiating agent in relation to the employees of the negotiating unit; or

(b) if no such negotiating unit has already been constituted, that Government may, by notification, constitute or re-constitute, as the case may be, a negotiating unit consisting of—

(i) all the establishments wherein any industry specified in such notification is carried on, or all undertakings of such establishments, situated in the area specified therein; or

(ii) all the units, branches or offices of the same industrial establishment or undertaking, situated in different places,

and thereafter refer the application to the Tribunal for certifying a negotiating agent in relation to the employees of such negotiating unit:

Provided that where the application has been made to the Central Government and that Government is not the appropriate Government, if, having regard to the matters referred to in the first proviso to clause (26) of section 2, that Government is of the opinion that it is not necessary or expedient to constitute a negotiating unit consisting of two or more industrial establishments or undertakings, or two or more units, branches or offices of the same industrial establishment or undertaking situated in more than one State that Government shall return the application to the applicant for presentation to the concerned State Government.

(5) The Central Government or the appropriate Government, as the case may be, shall on entertaining an application by a registered trade union of employees for certification as the local union in relation to the employees of a local unit decide whether it is necessary or expedient to certify a registered trade union of employees as local union in relation to such employees for the effective representation of such employees in regard to the matters referred to in clause (a) of section 69 and if it is of the opinion that it is necessary or expedient so to do, it shall refer the application to the Tribunal for certifying a local union in relation to such employees; and if it is not of such opinion it shall reject the application:

Provided that no application shall be referred to the Tribunal or rejected under this sub-section without giving the applicant a reasonable opportunity of being heard.

Manner of determining support for registered trade union of employees for certifying negotiating agent, associate union or local union.

58. (1) Where, under sub-section (4) or sub-section (5) of section 57, the Central Government or appropriate Government, as the case may be, refers an application for the certification of a registered trade union of employees as negotiating agent or local union to the Tribunal, it shall direct that the support for the registered trade union or trade unions of employees carrying on its or their activities for the benefit of such employees shall, for the purpose of certifying such trade union as negotiating agent, associate union or local union, be determined by the verification of the membership of such trade union or trade unions or by secret ballot and the Tribunal shall determine the support for such trade union or trade unions in accordance with such direction.

(2) In making any direction under sub-section (1) in regard to the manner of determining the support for any registered trade union or trade unions of employees carrying on its or their activities for the benefit of the employees of a negotiating unit or local unit, the Central Government or the appropriate Government, as the case may be, shall have regard to the extent of trade unionization among such employees and the ratio of the number of such employees who are members of the registered trade union of employees, which has made the application for certification as negotiating agent or local union, to the total number of such employees.

Procedure for enquiry by Tribunal.

59. (1) The Tribunal to which the application is referred under section 57 shall obtain from the Registrar particulars of the trade union or trade unions carrying on its or their activities for the benefit of the employees concerned.

(2) The Tribunal shall thereafter cause a notice specifying the date of hearing of the application to be served in such manner as may be prescribed on the applicant and on each of the other registered trade union, or trade unions, of employees, if any, carrying on its or their activities for the benefit of the employees concerned.

(3) The notice to be served under sub-section (2) on each of the other trade unions referred to in that sub-section shall be accompanied by a copy of the application.

(4) The Tribunal shall also cause the notice and a copy of the application to be affixed—

(a) in the case of an application for certification as negotiating agent, on the notice board of the industrial establishment or undertaking or unit, branch or office of the same industrial establishment or undertaking or, as the case may be, each of the industrial establishments or undertakings or units, branches or offices of the same industrial establishment or undertaking, constituting the negotiating unit; or

(b) in the case of an application for certification as local union, on the notice board of the concerned industrial establishment or undertaking or unit, branch or office of the same industrial establishment or undertaking, as the case may be.

(5) Subject to the provisions of this section, the Tribunal shall enquire into the application in accordance with such procedure as may be prescribed.

(6) For the purpose of enquiring into any application referred to it under section 57, the Tribunal may direct the Registrar to furnish any information or produce any document which is in the possession of the Registrar and the Registrar shall comply with such direction within such time as may be allowed by the Tribunal.

60. (1) Where the Tribunal, after ascertaining the support for the applicant and the other registered trade unions of employees which have appeared before it in pursuance of the notice under sub-section (2) or sub-section (4) of section 59 and after making the enquiry under sub-section (5) of that section finds that the registered trade union of employees which has applied under sub-section (1) of section 54 for certification as sole negotiating agent or chief negotiating agent or any other registered trade union of employees which has appeared before it in pursuance of the notice under sub-section (2) or sub-section (4) of section 59 satisfies—

Certification of registered trade union of employees as negotiating agent, associate union or local union.

(a) the condition specified in sub-section (1) of section 52; or

(b) the condition specified in sub-section (2) of that section,

the Tribunal may certify such registered trade union of employees as sole negotiating agent or chief negotiating agent, as the case may be.

Explanation.—For the removal of doubts it is hereby declared that a registered trade union of employees which has applied for certification as sole negotiating agent in relation to the employees of a negotiating unit may, in case it is not eligible to be certified as sole negotiating agent, be certified as chief negotiating agent in relation to such employees if it satisfies the conditions therefor referred to in this sub-section.

(2) Where the Tribunal, after the enquiry under sub-section (5) of section 59, finds that there are two or more registered trade unions of employees carrying on their activities among the employees of a negotiating unit and one of such trade unions of employees is certified by the Tribunal as the chief negotiating agent in relation to such employees, the other such registered trade union or registered trade unions of employees shall be certified by the Tribunal as associate union or associate unions if such registered trade union or registered trade unions of employees satisfies or satisfy the condition specified in sub-section (4) of section 52.

(3) Where the Tribunal, after ascertaining the support of the registered trade union of employees which has applied for certification as local union in relation to the employees of a local unit and of the other registered trade unions of employees which have appeared before it in pursuance of the notice under sub-section (2) or sub-section (4) of section 59 and after making the enquiry under sub-section (5) of that section finds that the registered trade union of employees which has made the application or any of the other registered trade unions of employees satisfies the conditions specified in sub-section (5) of section 52, the Tribunal shall certify such trade union of employees as local union in relation to the employees of such local unit.

Negotiat-
ing com-
mittee.

61. (1) Where in relation to the employees of a negotiating unit—

(a) in case such negotiating unit consists of two or more industrial establishments or undertakings, or two or more units, branches or offices of the same industrial establishment or undertaking, situated in more than one State, the Central Government; or

(b) in other cases, the appropriate Government,

is of the opinion that there is no registered trade union of employees carrying on its activities for the benefit of such employees or the registered trade union of employees or, if there are two or more registered trade unions of employees, none of such trade unions of employees has the support of more than fifty per cent. of such employees, the Central Government or the appropriate Government, as the case may be, may direct the Tribunal specially authorised in this behalf by the appropriate Government to proceed to hold elections, by secret ballot, among the employees, of such negotiating unit, who are entitled to take part in such election under sub-section (2) of section 53, to constitute a negotiating committee to represent such employees.

(2) The negotiating committee constituted in relation to the employees of a negotiating unit shall consist of a chairman and such number of other members as may be specified by the Central Government or the appropriate Government, as the case may be, and in specifying the number of the members of the negotiating committee, the Central Government or the appropriate Government shall have due regard to the total number of employees of the negotiating unit and the total number of registered trade unions of employees carrying on their activities for the benefit of such employees.

(3) Subject to the other provisions of this Act, the manner of the election of the chairman and other members of a negotiating committee, the persons qualified to stand for election, the disqualifications for being chosen as and for being such chairman or other member, the manner of settlement of disputes relating to the election and the filling up of casual vacancies shall be such as may be prescribed.

(4) Any registered trade union of employees carrying on its activities for the benefit of the employees of a negotiating unit shall be entitled to put up candidates in the elections to the office of the chairman and other members of the negotiating committee constituted for such negotiating unit.

(5) The procedure to be followed for the transaction of business of the negotiating committee (including the quorum for its meetings) shall be such as may be prescribed.

(6) No act or proceeding of the negotiating committee shall be deemed to be invalid by reason only of any vacancy in, or any defect in the constitution of, the negotiating committee.

(7) As soon as the chairman and other members of a negotiating committee have been elected, the Tribunal which conducted the elections for choosing the chairman and other members of the negotiating committee shall certify it as the sole negotiating agent in relation to the employees of the negotiating unit.

62. Where the Tribunal certifies a registered trade union of employees as sole negotiating agent, chief negotiating agent, associate union or local union or a negotiating committee as sole negotiating agent, it shall enter the particulars of such registered trade union of employees or negotiating committee, and the fact of its certification as sole negotiating agent, chief negotiating agent, associate union or local union in a register kept in that behalf and issue a certificate in respect of its certification to such registered trade union of employees or negotiating committee, as the case may be.

Entering particulars of certification in register and communication of certification of negotiating agent, associate union or local union.

63. Where—

(1) a registered trade union of employees has been certified—

(a) as negotiating agent, or associate union in relation to the employees of a negotiating unit; or

(b) as local union in relation to the employees of a local unit; or

(2) a negotiating committee has been certified as sole negotiating agent in relation to the employees of a negotiating unit,

then, the Tribunal so certifying shall forward a copy of the order of certification—

Copies of certificate to be forwarded to employers concerned.

(i) in the case referred to in sub-clause (a) of clause (1) or clause (2) to the employer or each of the employers in relation to the industrial establishment or undertaking or industrial establishments or undertakings or unit, branch or office or units, branches or offices, of the same industrial establishment or undertaking, as the case may be, constituting the negotiating unit; or

(ii) in the case referred to in sub-clause (b) of clause (1) to the employer in relation to the local unit,

and also where the negotiating unit was constituted by the Central Government to that Government and, in other cases, to the appropriate Government.

64. (1) Every certification of a registered trade union of employees as negotiating agent, associate union or local union or of a negotiating committee as sole negotiating agent shall, subject to the provisions of sub-sections (2) and (3) be in force for a period of two years from the date of such certification:

Term for which certification of negotiating agent shall be valid and cancellation of certification.

Provided that notwithstanding the expiry of the aforesaid period of two years, the certification of a registered trade union of employees as sole negotiating agent, chief negotiating agent or of a negotiating committee as sole negotiating agent shall continue to be in force—

(a) until a registered trade union of employees or negotiating committee is certified for the next following term as sole negotiating agent in relation to the employees of the negotiating unit; or

(b) until a registered trade union of employees is certified as chief negotiating agent in relation to such employees for the next following term.

(2) The Tribunal, which certified a registered trade union of employees as negotiating agent, associate union or local union, may cancel such certification, if, after giving such trade union of employees a reasonable opportunity of being heard and making such enquiry as may be prescribed, the Tribunal is satisfied that such registered trade union of employees obtained the certification as such negotiating agent, associate union or local union by fraud or misrepresentation.

(3) Where the registration of a trade union of employees, which has been certified as the sole negotiating agent, chief negotiating agent, associate union or local union, is cancelled under sub-section (1) or sub-section (2) of section 26, the certification of such trade union as sole negotiating agent, chief negotiating agent, associate union or local union, as the case may be, shall be deemed to have been cancelled.

(4) Where the certification of any registered trade union of employees as chief negotiating agent in relation to the employees of any negotiating unit is cancelled or is deemed to be cancelled, the certification of any other registered trade union or registered trade unions of employees as associate union in relation to such employees shall be deemed to be cancelled.

(5) A copy of every order under sub-section (2) shall be forwarded to the employer or employers, as the case may be, to whom copy of the order certifying the registered trade union of employees as negotiating agent, associate union or local union would have been forwarded under section 63 and also—

(a) where the negotiating unit was constituted by the Central Government, to that Government; and

(b) in other cases, to the appropriate Government.

Entry in register of cancellation of certification.

65. When the certification of a registered trade union of employees as negotiating agent, associate union or local union is cancelled or deemed to be cancelled under sub-section (2) or sub-section (3), as the case may be, of section 64, the Tribunal shall make an entry to that effect in the register referred to in section 62.

Employer bound to recognise negotiating agent, associate union and local union.

66. Where—

(a) any registered trade union of employees has been certified as negotiating agent or associate union or a negotiating committee has been certified as sole negotiating agent in relation to the employees of a negotiating unit;

(b) a registered trade union of employees has been certified as a local union, in relation to the employees of a local unit;

the employer or employers, as the case may be, employing such employees shall, so long as such certification continues to be in force, recognise—

(i) the registered trade union of employees referred to in clause

(a) as negotiating agent or associate union or the negotiating committee as sole negotiating agent; or

- (ii) the registered trade union of employees referred to in clause (b) as local union.

67. (1) A registered trade union of employees certified as sole negotiating agent or chief negotiating agent, as the case may be, under sub-section (1) of section 60 or a negotiating committee certified as a sole negotiating agent under sub-section (7) of section 61 shall be entitled—

Rights of
negotiat-
ing agent.

(a) to raise disputes with the employer or employers in relation to the industrial establishment or undertaking or industrial establishments or undertakings, or unit, branch or office, or units, branches or offices of the same industrial establishment or undertaking, as the case may be, constituting the negotiating unit, in regard to general questions concerning employment or non-employment or terms of employment and conditions of labour of the employees of the negotiating unit and enter into agreements with such employer or employers, as the case may be, in pursuance of negotiations under section 97 or conciliation under section 98 or to agree to refer such disputes for arbitration under section 100 or adjudication under section 101;

(b) subject to the other provisions of this Act, to call for a strike;

(c) to obtain from the employer such accommodation for its office as the employer is capable of providing;

(d) to put up or cause to be put up a notice board on the premises of the industrial establishment or undertaking or each of the industrial establishments or undertakings, or unit, branch or office or, each of the units, branches or offices of the same industrial establishment or undertaking, as the case may be, constituting the negotiating unit, and affix or cause to be affixed thereon, notices relating to meetings, statement of accounts of its income and expenditure and other statements or announcements other than statements or announcements which are subversive of discipline;

(e) to hold discussions after prior intimation to the employer concerned with the employees of the negotiating unit within the premises of the industrial establishment or undertaking or any of the industrial establishments or undertakings or unit, branch or office or any of the units, branches or offices of the same industrial establishment or undertaking, constituting the negotiating unit, at such place as shall be allowed by the employer concerned:

Provided that such discussions shall not interfere with the due working of the industrial establishment or undertaking;

(f) to hold discussions with the employer or employers concerned or any person nominated by such employer or employers or with the representatives of a trade union of employers, for the purpose of redressing any grievance of all or any of the employees of the negotiating unit;

(g) to hold discussions with the employer in relation to the industrial establishment or undertaking or any of the industrial establishments or undertakings or unit, branch or office or any of the units, branches or offices of the same industrial establishment or

undertaking, constituting the negotiating unit, regarding the state of finance and economy of such industrial establishment or undertaking;

(h) to seek and receive as and when required information in regard to the finance and economy of such industrial establishment or undertaking so as to enable such negotiating agent to make suggestions and proposals in order to safeguard the interests of the employees of such industrial establishment or undertaking or of the industrial establishments or undertakings or the public;

(i) for the purposes of effectively discharging its functions under this Act, to inspect, by prior arrangement with the employer concerned, books of account maintained in the industrial establishment or undertaking or any of the industrial establishments or undertakings or the unit, branch or office or any of the units, branches or offices of the same industrial establishment or undertaking constituting the negotiating unit;

(j) to nominate representatives of employees on grievance settlement authority constituted under rules made under this Act;

(k) to nominate representatives on behalf of employees on any body, whether or not established by or under this Act, in relation to the negotiating unit and consisting of representatives of employees;

(l) to represent all or any of the employees of the negotiating unit before any authority under this Act;

(m) in the case of a registered trade union of employees certified as negotiating agent, to collect sums payable by the members thereof to such registered trade union of employees either directly or by the check-off system; and

(n) to exercise such other powers conferred on it by or under this Act:

Provided that a negotiating agent shall not disclose any information obtained by it under clause (h) or in pursuance of inspection of books of account under clause (i) to any person for any purpose other than for the purpose of properly discharging its functions under this Act.

(2) A registered trade union of employees certified as chief negotiating agent in relation to the employees of a negotiating unit shall be entitled to exercise all the powers referred to in sub-section (1) notwithstanding that any or all of the registered trade unions of employees certified as associate unions in relation to such employees neglects or refuses to associate themselves with the exercise of such powers by such chief negotiating agent.

Rights of
associate
unions.

68. The registered trade union of employees certified as an associate union under sub-section (2) of section 60 shall be entitled—

(a) to be associated with the chief negotiating agent in negotiation with the employer or employers, as the case may be, or conciliation proceedings, in regard to the matters specified in clause (a) of sub-section (1) of section 67:

Provided that any settlement arrived at in pursuance of such negotiation or conciliation shall be signed only by the representatives of the chief negotiating agent;

(b) to collect sums payable by members of the associate union either directly or by the check-off system;

(c) to hold discussions with the employer concerned in regard to individual disputes for the settlement of such disputes;

(d) to represent the employee or employees concerned in an individual dispute before the grievance settlement authority or the Labour Court.

69. A registered trade union of employees certified as a local union under sub-section (3) of section 60 in relation to the employees of a local unit shall be entitled—

Rights of
local
union,

(a) to raise disputes with the employer in relation to such local unit in regard to matters exclusively of interest to any employee or employees of such local unit and to arrive at settlements either in pursuance of negotiations under section 97 or conciliation under section 98 or to agree to refer the dispute for arbitration under section 100 or adjudication under section 101:

Provided that a local union shall not raise disputes in regard to any matter which has, or is likely to have, repercussions on the general conditions of service of the employees employed in two or more industrial establishments or undertakings or units, branches or offices of the same industrial establishment or undertaking constituting the negotiating unit:

Provided further that where any provision of any settlement arrived at by a local union in relation to the employees of a local unit, either in pursuance of negotiations under section 97 or conciliation under section 98, is not consistent with any provision of any settlement arrived at by the negotiating agent in relation to such employees also, either in pursuance of negotiations under section 97 or conciliation under section 98, the provision of the settlement arrived at by the negotiating agent (whether such settlement is arrived at before or after the settlement arrived at by the local union) shall prevail and the provision of the settlement arrived at by the local union shall, to the extent of the inconsistency be void;

(b) to collect sums payable by members to the local union either directly or by the check-off system; and

(c) to be associated with the chief negotiating agent, where the employees in relation to whom such chief negotiating agent is certified includes employees of the local unit in relation to whom such local union is certified, in discussions with the employer regarding industrial disputes or other matters of interest confined only to the employees of such local unit.

70. Any registered trade union of employees which is not certified as a sole negotiating agent, chief negotiating agent, associate union or local union under section 60 shall be entitled to represent the employee or employees concerned in an individual dispute before the grievance settlement authority or the Labour Court, if such employee or employees is or are its member or members.

Rights of
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ployees.

Protec-
tion of
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71. During the period when any employee continues to be an office-bearer of any registered trade union of employees certified as negotiating agent, associate union or local union or continues to be the chairman or other member of a negotiating committee and for a further period of five years immediately after he ceases to be such office-bearer or chairman or member, the employer in relation to such employee shall not—

(a) alter to the prejudice of such employee the conditions of service applicable to him immediately before he became such office-bearer, chairman or member; or

(b) discharge or punish (whether by dismissal or otherwise) any such employee for anything done by him as such office-bearer or chairman or member, not being anything done in contravention of any provision of this Act or any other law.

CHAPTER V

STANDING ORDERS

Applica-
tion of
Chapter.

72. The provisions of this Chapter shall not apply to any industrial establishment or undertaking,—

(a) which ordinarily employs less than fifty employees; or

(b) which, during the period of twelve months immediately preceding the commencement of this Act, ordinarily employed less than fifty employees:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification, apply the provisions of this Act to any industrial establishment or undertaking employing such number of persons, less than the number specified in clause (a) or clause (b), as may be specified in the notification.

Making
of Stand-
ing
Orders.

73. (1) The Central Government shall, by notification, make Standing Orders to provide for the following matters, namely:—

(a) classification of employees, that is to say, whether permanent, temporary, apprentice, probationers, *badlies*;

(b) conditions of service of employees, including matters relating to the issue of orders of appointment of employees, procedure to be followed by employees in applying for, and the authority which may grant, leave and holidays;

(c) misconduct of employees, enquiry into such misconduct and punishment therefor;

(d) superannuation of employees; and

(e) shift working of employees,

and the provisions of such Standing Orders shall, subject to the provisions of sub-section (2), be in operation in every industrial establishment and undertaking to which this Chapter applies whether or not the Central Government is the appropriate Government in relation to such industrial establishment or undertaking.

Explanation.—For the purposes of clause (a), section 82 and the Fourth Schedule “badli employee” means an employee who is employed in an industrial establishment or undertaking in the place of another employee whose name is borne on the muster rolls of such establishment or undertaking, as the case may be, who shall cease to be regarded as such for the purposes of the provisions aforesaid if he has completed one year of continuous service in the industrial establishment or undertaking, as the case may be.

(2) The provisions of Standing Orders made under sub-section (1) may be modified by the employer, in relation to any industrial establishment or undertaking, if an agreement is entered into by him with the negotiating agent in relation to the employees employed in such industrial establishment or undertaking for such modification:

Provided that where any unit, branch or office of an industrial establishment or undertaking is a negotiating unit, the agreement between the employer in relation to such unit, branch or office and the negotiating agent in relation to the employees employed therein, any such modification shall apply only to such unit, branch or office:

Provided further that no provision of the Standing Orders shall be modified if the proposed modification prejudicially affects the employees concerned.

74. If any question arises as to the application, or interpretation, of the Standing Orders made under sub-section (1) of section 73 or the modifications made therein by an agreement entered into under sub-section (2) of that section, the employer or any employee or employees concerned or the negotiating agent in relation to the employees employed in the industrial establishment or undertaking, or unit, branch or office of an industrial establishment or undertaking, wherein the question has arisen, may apply to the Labour Court, within the local limits of whose territorial jurisdiction such industrial establishment or undertaking or unit, branch or office is situated, to decide the question and the Labour Court shall, after giving all the parties concerned a reasonable opportunity of being heard, decide the question and such decision shall be final:

Interpretation, etc., of Standing Orders.

Provided that where a negotiating unit consists of more than one unit, branch or office of the same industrial establishment or undertaking and the question aforesaid has arisen between the employer in relation to such industrial establishment or undertaking and the employees employed in two or more units, branches or offices of that industrial establishment or undertaking, the application to decide the question shall be made to the Labour Court within whose territorial jurisdiction the head office of such industrial establishment or undertaking is situated.

75. (1) Where any employee is suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him, such investigation or enquiry, or where there is an investigation followed by an enquiry, both the investigation and enquiry shall be completed ordinarily within a period of ninety days from the date of suspension.

Time limit for completion of disciplinary proceedings and liability to pay subsistence allowance,

(2) The Standing Orders made under sub-section (1) of section 73 or modified under sub-section (2) of that section shall provide that where an employee is suspended as aforesaid the employer in relation to an industrial establishment or undertaking shall pay to such employee employed in such industrial establishment or undertaking subsistence allowance at

the rates specified in sub-section (3) for the period during which such employee is placed under suspension pending investigation or enquiry into complaints or charges of misconduct against such employee.

(3) The amount of subsistence allowance payable under sub-section (2) shall be—

(a) fifty per cent. of the wages which the employee concerned was in receipt immediately preceding the date of suspension, for the first thirty days of suspension;

(b) seventy-five per cent. of such wages for the next thirty days of suspension; and

(c) full wages for the remaining part of the period of suspension:

Provided that where the delay in the completion of disciplinary proceedings against the employee is directly attributable to the conduct of such employee, the rates of subsistence allowance payable to such employee for any period after the expiry of the first period of thirty days of suspension shall be less than the rates specified in this sub-section for such period, by twenty-five per cent. of the rates so specified.

(4) If any doubt or dispute arises regarding the quantum or rate of subsistence allowance payable to an employee under this section, the employee or the employer concerned may apply to the Labour Court within the local limits of whose jurisdiction the industrial establishment or undertaking or unit, branch or office of an industrial establishment or undertaking wherein such employee is employed is situate, and the decision of the Labour Court shall be final.

Laying of
Standing
Order
before
the
Houses of
Parliament.

76. Every Standing Order made by the Central Government under sub-section (1) of section 73 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Standing Order or both Houses agree that the Standing Order should not be made, the Standing Order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Standing Order.

CHAPTER VI

PROCEDURE FOR CHANGE IN TERMS OF EMPLOYMENT AND CONDITIONS OF LABOUR AND REGULATION OF CONDITIONS OF EMPLOYMENT BY GOVERNMENT

Notice of
change of
terms of
employment and
conditions of
labour.

77. (1) Where an employer proposes to effect any change in the terms of employment or conditions of labour applicable to any employee in respect of—

(a) hours of work and rest interval;

(b) withdrawal of any customary concessions or privilege or change in usage; or

(c) any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control),

he shall not effect such change—

(i) without giving to the employee likely to be affected by such

change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(ii) within twenty-one days of the giving of such notice.

(2) The employees affected by such change or the negotiating agent in relation to such employees may object to the proposed change in the conditions of employment and, where the employer and the employees do not agree to the proposed change, the provisions of this Act shall apply in relation to such dispute as they apply in relation to any other industrial dispute.

(3) Notwithstanding anything contained in sub-section (1), no notice shall be required under sub-section (1) for effecting any change where the change is proposed to be effected in pursuance of any settlement or award of an arbitrator or a Labour Court, Tribunal or the National Commission.

(4) In respect of any matter relating to terms of employment or conditions of labour applicable to any employee, other than a matter referred to in sub-section (1), no employer shall, subject to the provisions of sub-section (7), effect any change unless the employees likely to be affected by the proposed change have agreed to it by a settlement arrived at by such employer and the negotiating agent.

(5) Where the employer and the negotiating agent fail to arrive at a settlement in regard to any change in respect of any matter relating to terms of employment or conditions of labour to which sub-section (4) applies or the negotiations to arrive at a settlement continue for a period of more than sixty days, the employer and the negotiating agent shall forward, jointly or separately in the prescribed manner a report to the Conciliation Officer, having jurisdiction in relation to the dispute, regarding the failure of the negotiations or the continuance thereof as aforesaid and the facts of the dispute.

(6) The provisions of this Act, except section 94 and section 112 shall apply in relation to any dispute referred to in sub-section (5) as they apply in relation to any other industrial dispute.

(7) No change in respect of any matter relating to the terms of employment or conditions of labour to which sub-section (4) applies shall be made except after and in accordance with the settlement referred to in that sub-section, or a settlement arrived at in the course of conciliation under section 98 or the award of an arbitrator or of a Labour Court, Tribunal or the National Commission, as the case may be.

78. (1) Notwithstanding anything contained in section 77, during the pendency of any conciliation proceeding before a Conciliation Officer or of any proceeding before an arbitrator or a Labour Court or a Tribunal or the National Commission in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the employees concerned in such dispute, the terms of employment or conditions of labour applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any employees concerned with such dispute,

save with the express permission, in writing, of the authority before which the proceeding is pending.

Terms of employment, etc., to remain Un-changed under certain circumstances.

(2) During the pendency of any proceeding referred to in sub-section (1) in regard to an industrial dispute, the employer may, subject to the other provisions of this Act—

(a) alter, in regard to any matter not connected with the dispute, the terms of employment or conditions of labour applicable to that employee immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that employee:

Provided that no such employee shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the application is pending for the approval of the action taken by the employer.

(3) Where an employer contravenes the provisions of this section during the pendency of any proceeding referred to in sub-section (1), any employee aggrieved by such contravention, may make, a complaint in writing, in the prescribed manner to the authority before which such proceeding is pending, and such authority shall, on receipt of such complaint, adjudicate upon the complaint and in so doing the authority shall have all the powers conferred by or under this Act on a Labour Court while adjudicating an individual dispute.

Regulation of conditions of employment by Government.

79. (1) Where it appears to the appropriate Government that an industrial dispute exists between an employer in relation to an industrial establishment or undertaking and the employees employed therein and in respect of such industrial dispute that Government has received a report regarding the failure of conciliation proceedings under sub-section (5) of section 98, the appropriate Government, if it appears to that Government that in the public interest it is necessary to make provision in regard to all or any of the following matters, it may, by general or special order notified in the Official Gazette, make provision—

(a) prohibiting, subject to the provisions of the order, strike or lock-out in connection with such industrial dispute in any industrial establishment or undertaking, other than an industrial establishment or undertaking wherein any industry which is an essential service is carried on or any undertaking of such industrial establishment;

(b) requiring employers, employees or both to observe such terms and conditions of employment (including terms and conditions relating to work load and manning, wages and payment of interim or *ad hoc* bonus) as may be specified by, or determined in accordance with, the order;

(c) requiring any industrial establishment or undertaking or any part thereof not to close or remain closed or stop production;

(d) requiring the employees not to slow down work or continue to slow down work;

(e) requiring any industrial establishment or undertaking not to suspend, or terminate the services of, any employee or any class of employees; and

(f) any incidental or supplementary matter which appear to the appropriate Government to be necessary or expedient for the purpose of the order:

Provided that no order made under clause (b) shall require an employer to observe terms and conditions of employment, less favourable to the employees than those which were applicable to them at any time within ninety days preceding the date of the order.

(2) Where such industrial dispute is referred to for arbitration under section 100, the order made under sub-section (1) shall—

(a) in so far as it makes provision in respect of matters referred to in clause (a) of that sub-section, cease to be in force on the date on which such reference is made [such cesser being without prejudice to the provisions of sub-clause (ii) of clause (d) of sub-section (2) of section 89 or sub-clause (ii) of clause (d) of sub-section (7) of that section]; and

(b) in so far as it makes provision in respect of matters referred to in clauses (b), (c), (d), (e) and (f) of that sub-section cease to be in force with effect from the date on which the award of the arbitrator in regard to such industrial dispute comes into operation.

(3) Where such industrial dispute is referred to a Labour Court, Tribunal or the National Commission under section 101 or section 104, as the case may be, the order made under sub-section (1) shall—

(a) in so far as it makes provision in respect of matters referred to in clause (a) of that sub-section, cease to be in force on the date on which such reference is made [such cesser being without prejudice to the provisions of sub-clause (ii) of clause (d) of sub-section (2) of section 90 or sub-clause (ii) of clause (d) of sub-section (7) of that section]; and

(b) in so far as it makes provision in respect of any matter referred to in clauses (b), (c), (d), (e) and (f) of that sub-section cease to be in force—

(i) on the expiry of a period of ninety days from the date on which the industrial dispute is referred to the Labour Court, Tribunal or the National Commission; or

(ii) where before the expiry of the aforesaid period of ninety days, the Labour Court, Tribunal or the National Commission makes an award granting interim relief in respect of any such matter, on the date with effect from which such interim award becomes enforceable.

(4) Where such industrial dispute is not referred to for arbitration under section 100 or for adjudication to the Labour Court, Tribunal or the National Commission under section 101 or section 104, as the case may be, before the expiry of a period of six months from the date on which the order made under sub-section (1) is notified, the order shall cease to be in force on the expiry of such period.

CHAPTER VII

LAY-OFF, RETRENCHMENT AND CLOSURE

80. In this Chapter "continuous service", in relation to an employee, means the uninterrupted service of such employee, including his service which may be interrupted on account of sickness or unauthorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the employee. Definition of continuous service.

Explanation 1.—Where an employee is not in continuous service within the meaning of this clause for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the employee during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than—

(i) one hundred and sixty days in the case of an employee employed below ground in a mine; and

(ii) two hundred days, in any other case;

(b) for a period of six months, if the employee during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than—

(i) eighty days in the case of an employee employed below ground in a mine; and

(ii) one hundred days, in any other case.

Explanation 2.—For the purposes of *Explanation 1*, the number of days on which an employee has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by or under this Act or any other law applicable to the industrial establishment or undertaking;

(ii) he has been on leave on full wages earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.

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81. (1) Whenever an employee whose name is borne on the muster rolls of an industrial establishment or undertaking (whether or not such establishment or undertaking is of a seasonal character or in which work is performed only intermittently) employing twenty or more persons and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the wages, that would have been payable to him had he not been so laid-off, for the first thirty days of lay-off and thereafter compensation which shall be equal to seventy-five per cent. of the total of the wages so payable:

Provided that employees engaged in any industrial establishment or undertaking which is of a seasonal character shall be entitled to compensation under this sub-section only in relation to any lay-off during the season in which such industrial establishment or undertaking ordinarily carries on its activity.

(2) No compensation shall be payable by the employer under sub-section (1) to an employee who has been laid-off—

(a) if he refuses to accept any alternative employment in the same establishment or undertaking from which he has been laid-off, or in any other establishment or undertaking belonging to the same

employer situate in the same town or village or within a radius of eight kilometres from the industrial establishment or undertaking, as the case may be, to which he belongs, and—

(i) such alternative employment does not, in the opinion of the employer, call for any special skill or previous experience and can be done by the employee;

(ii) the wages which would normally have been paid to the employee had he not been laid-off are offered for the alternative employment also; and

(iii) the acceptance of the alternative employment does not involve undue hardship to the employee having regard to the facts and circumstances of his case; or

(b) if he does not present himself for work at the industrial establishment or undertaking at the appointed time during normal working hours at least once a day;

(c) if such laying-off is due to a strike or slowing down of production on the part of employees in another part of the industrial establishment or undertaking.

(3) Notwithstanding that employees in any industrial establishment or undertaking have been laid-off, it shall be the duty of every employer to maintain for the purpose of this Chapter a muster roll and to provide for the making of entries therein by employees who may present themselves for work at the establishment or undertaking at the appointed time during normal working hours under clause (b) of sub-section (2).

82. (1) No employee (other than a *badli* employee or a casual employee) whose name is borne on the muster rolls of an industrial establishment or undertaking (not being an industrial establishment or undertaking of a seasonal character or in which work is performed only intermittently) in which not less than one hundred employees were employed on an average per working day for the preceding twelve months, shall be laid-off by his employer except with the previous permission of such authority as may be specified by the appropriate Government by notification (hereafter in this section referred to as the specified authority).

Prohibition of lay-off in certain circumstances.

(2) Nothing in sub-section (1) shall apply to lay-off of employees necessitated by—

(a) shortage of power;

(b) natural calamity;

(c) major breakdown of machinery;

(d) strike or slowing down of production on the part of employees in another part of the industrial establishment or undertaking; or

(e) in the case of a mine, flood, fire, excess of inflammable gas or explosion:

Provided that where the lay-off is necessitated by the reasons referred to in clause (c), (d) or (e), the employer shall, within a period of thirty days from the date of the commencement of the lay-off, apply to the specified authority in the prescribed form for the approval of such lay-off.

Explanation.—For the purposes of this sub-section only a break-down of machinery which cannot be rectified within a period of seven days

from the date on which the employees concerned were rendered idle on account of such break-down shall be deemed to be a major break-down of machinery and any lay-off due to a major break-down of machinery shall be deemed to have commenced only on the expiry of such period of seven days.

(3) Where the employees (other than *badli* employees or casual employees) of an industrial establishment or undertaking referred to in sub-section (1) and to which Chapter VB of the Industrial Disputes Act, 1947, did not apply have been laid-off before the commencement of this Act, and such lay-off continues at such commencement the employer in relation to such establishment shall, within a period of fifteen days from such commencement, apply to the specified authority for permission to continue the lay-off.

14 of 1947.

(4) In the case of every application for previous permission for lay-off under sub-section (1) for the approval of lay-off under the proviso to sub-section (2), or for permission to continue lay-off under sub-section (3), the specified authority may, after making such inquiry as it thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for.

(5) Where an application for previous permission to lay-off under sub-section (1) for the approval of lay-off under the proviso to sub-section (2) or for permission to continue lay-off under sub-section (3) has been made and the specified authority does not communicate the permission or approval to the employer within a period of sixty days from the date on which the application is made, the permission applied for, shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) Where no application for the previous permission to lay-off under sub-section (1), for the approval of lay-off under the proviso to sub-section (2) or for permission to continue lay-off under sub-section (3) has been made or where such permission or approval has been refused, such lay-off shall be deemed to be illegal from the date on which the employees have been laid-off and the employees shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(7) If a question arises whether an industrial establishment or undertaking is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Condi-
tions pre-
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for re-
trench-
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em-
ployees.

83. (1) No employee employed in any industrial establishment or undertaking who has been in continuous service for not less than one year under any employer shall be retrenched by that employer until—

(a) the employee has been given—

(i) where such establishment or undertaking has been employing less than one hundred persons on an average per working day during the preceding twelve months, thirty days' notice; and

(ii) in the case of any other industrial establishment or undertaking, ninety days' notice,

in writing indicating the reasons for retrenchment and the period of notice has expired, or the employee has been paid, in lieu of such notice, wages for the period of notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service of such employee;

(b) in the case of an employee employed in any industrial establishment or undertaking in which not less than one hundred employees were employed on an average per working day during the preceding twelve months' notice in the prescribed manner stating clearly the reasons for the retrenchment is served on the appropriate Government or such authority as may be specified by the appropriate Government, by notification (hereafter in this section referred to as the specified authority) and the permission of such Government or authority is obtained under sub-section (2); and

(c) the employee has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or part thereof in excess of one hundred and eighty days.

(2) On the receipt of a notice under clause (b) of sub-section (1), the appropriate Government or the specified authority, as the case may be may, after making such inquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing, the permission for the retrenchment to which the notice relates.

(3) Where the appropriate Government or specified authority, as the case may be, does not communicate the permission or the refusal to grant the permission to the employer within a period of ninety days of the date of service of the notice under clause (c) of sub-section (1), the appropriate Government or the specified authority shall be deemed to have granted permission for such retrenchment on the expiration of the said period of ninety days.

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(4) Where at the commencement of this Act, the period of notice given under clause (a) of section 25F of the Industrial Disputes Act, 1947 for the retrenchment of any employee employed in any industrial establishment or undertaking to which Chapter VB of the Industrial Disputes Act, 1947, did not apply, has not expired, the employer shall not retrench the employee but shall, within a period of fifteen days from such commencement, apply to the appropriate Government or to the specified authority for permission for retrenchment of such employee.

(5) Where an application for permission has been made under sub-section (4) and the appropriate Government or the specified authority, as the case may be, does not communicate the permission or refusal to grant the permission to the employer within a period of sixty days from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) Where no notice under clause (b) of sub-section (1) has been given, or where no application under sub-section (4) is made within the period specified therein or, in either case, where the permission for retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the employee and the employee shall be entitled to all the benefits under any law for the time being in force as if no such notice had been given to him.

Procedure
for
retrench-
ment.

84. Where any employee in an industrial establishment or undertaking who is a citizen of India, is to be retrenched and belongs to a particular category of employees in that establishment or undertaking, then, in the absence of any agreement between the employer and the employee in this behalf, the employer shall ordinarily retrench the employee who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other employee.

Re-
employ-
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retrench-
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ployee.

85. Where any employees are retrenched, and the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched employees who are citizens of India to offer themselves for re-employment and such retrenched employees who offer themselves for re-employment shall have preference over other persons.

Computa-
tion of
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off and
retrench-
ment
compensa-
tion.

86. Where an employer refuses or fails to pay lay-off or retrenchment compensation, as the case may be, the employee concerned may by an application, make a claim before the Labour Court for computing the amount so due, and the Labour Court shall, after giving the employer and the employee concerned an opportunity of being heard in such manner as may be prescribed, make an award computing the amount and directing the employer to pay the same to the employee.

Compen-
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industrial
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87. (1) Where the ownership or management of any industrial establishment or undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment or undertaking (hereafter in this section referred to as the transferor) to a new employer (hereafter in this section referred to as the transferee)—

(a) every employee who has been in continuous service for not less than one year in that establishment or undertaking immediately before such transfer shall be entitled to continue employment in that establishment or undertaking under the transferee on the same terms and conditions of service as if such establishment or undertaking had not been transferred;

(b) the transferee shall be liable in respect of all the claims, which the employees of such industrial establishment or undertaking had against the transferor and such liability shall not be extinguished by any agreement entered into by the transferee with the transferor, or the employees employed in that establishment or undertaking, or with both.

(2) Nothing in sub-section (1) shall be deemed to prohibit the retirement of any employee on the basis of mutual agreement or in pursuance of any voluntary retirement scheme.

Condi-
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taking.

88. (1) No employer shall close down an industrial establishment or undertaking unless he has served, for previous permission, at least ninety days before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the industrial establishment or undertaking and obtains the permission of the appropriate Government for such closure:

Provided that nothing in this section shall apply to an industrial establishment or undertaking set up for the construction of only any

one particular building, bridge, road, canal or dam or such other construction work.

(2) On receipt of a notice under sub-section (1), the appropriate Government may, if it is satisfied that the reasons for the intended closure of the industrial establishment or undertaking are not adequate and sufficient or such closure is prejudicial to public interest, by order, direct the employer not to close down such establishment or undertaking.

14 of 1947.

(3) Where a notice has been served on the appropriate Government, under sub-section (1) of section 25FFA of the Industrial Disputes Act, 1947, by an employer in relation to an industrial establishment or undertaking to which Chapter VB of the aforesaid Act does not apply and the period of notice has not expired at the commencement of this Act, such employer shall not close down such industrial establishment or undertaking but shall, within a period of fifteen days from such commencement apply to the appropriate Government for permission to close down the undertaking.

(4) Where no notice for permission to close down has been served under sub-section (1) or where no application for permission is made under sub-section (3) within the period specified therein or the permission for closure has been refused or the industrial establishment or undertaking has been closed down before obtaining such permission, the closure of the industrial establishment or undertaking shall be deemed to be illegal from the date of closure and the employees shall be entitled to all the benefits under any law for the time being in force as if the industrial establishment or undertaking, as the case may be, has not been closed down.

(5) Notwithstanding anything contained in sub-section (1) and sub-section (3), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the industrial establishment or undertaking or death of the employer in relation to such industrial establishment or undertaking or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment or undertaking for such period as may be specified in the order.

(6) Where on receipt of a notice under sub-section (1) or application for permission under sub-section (3) an industrial establishment or undertaking is permitted by the appropriate Government to be closed down, every employee in such establishment or undertaking, who has been in continuous service therein for not less than one year immediately before the date of the notice under sub-section (1) or application for permission under sub-section (3), shall be entitled to notice and compensation as specified in section 83 as if the said employee had been retrenched under that section.

(7) The provisions of this section shall apply to every industrial establishment or undertaking irrespective of the number of employees employed therein:

Provided that no previous permission shall be required for the closing down of any industrial establishment or undertaking in which—

(a) not more than one hundred employees are employed; or

(b) not more than one hundred employees were employed on any working day during the preceding twelve months.

Special provision as to restarting of industrial establishment or undertaking closed down before commencement of the Act,

89. If the appropriate Government is of opinion, in respect of any industrial establishment or undertaking, other than an industrial establishment or undertaking referred to in the proviso to sub-section (7) of section 88, to which Chapter VB of the Industrial Disputes Act, 1947, did not apply is closed down before the commencement of this Act,—

14 of 1947.

(a) that such establishment or undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting such establishment or undertaking;

(c) that it is necessary for the rehabilitation of the employees employed in such establishment or undertaking before its closure or it is in public interest to restart such establishment or undertaking; and

(d) that the restarting of such establishment or undertaking shall not result in hardship to the employer in relation to the establishment or undertaking,

it may, after giving reasonable opportunity to such employer and the employees employed in such establishment or undertaking, direct, by order published in the Official Gazette, that the establishment or undertaking shall be restarted within such time (not being less than thirty days from the date of the publication of the order) as may be specified in the order.

CHAPTER VIII

STRIKES AND LOCK-OUTS

Prohibition of strikes and lock-outs.

90. (1) No employee employed in any essential service shall go on strike in breach of contract.

(2) No person employed in any industrial establishment or undertaking (other than an essential service) shall go on strike in breach of contract—

(a) without giving to the employer a notice in writing of strike, as hereinafter provided, within six weeks before striking;

(b) within fourteen days of the giving of such notice;

(c) before the expiry of the date of strike specified in any such notice as aforesaid; and

(d) during—

(A) (i) the pendency of any conciliation proceedings in respect of any industrial dispute before the Conciliation Officer and fourteen days after the conclusion of such proceedings, or

(ii) the pendency of any proceedings before an arbitrator or a Labour Court, Tribunal or National Commission, as the case may be, and sixty days after the conclusion of such proceedings,

in respect of any matter in relation to which such proceedings are pending; or

(B) during the period in which a settlement arrived at in the course of negotiations under section 97 or conciliation under section 98 or an award is in operation, in respect of any of the matters covered by the settlement or award:

Provided that no notice under this sub-section of the proposed strike shall be necessary where there is already in existence a lock-out in the industrial establishment or undertaking, but the negotiating agent shall give intimation of the strike to the appropriate Government in the prescribed manner.

(3) Every decision to go on strike shall be supported by not less than sixty per cent. of the employees in a strike ballot conducted in such manner as may be prescribed prior to the giving of the notice referred to in clause (a) of sub-section (2) and the notice shall be given by the negotiating agent in such form as may be prescribed.

(4) The Registrar shall have general power of supervision and superintendence over the conduct of strike ballot and he shall also decide, in such manner as may be prescribed, any dispute pertaining to a strike ballot and he may exercise such powers either on his own motion or on a request made in that behalf by any employee or the employer.

(5) No employer in relation to an essential service shall lock-out his employees.

(6) No employer in relation to any industrial establishment or undertaking (other than an essential service) shall lock-out any of his employees—

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out;

(b) within fourteen days of the giving of such notice;

(c) before the expiry of the date of lock-out specified in such notice as aforesaid; and

(d) during—

(A) (i) the pendency of any conciliation proceedings in respect of any industrial dispute before the Conciliation Officer and fourteen days after the conclusion of such proceedings, or

(ii) the pendency of any proceedings before an arbitrator or a Labour Court, Tribunal or National Commission, as the case may be, and sixty days after the conclusion of such proceedings,

in respect of any matter in relation to which such proceedings are pending; or

(B) during the period in which a settlement arrived at in the course of negotiations under section 97 or conciliation under section 98 or an award is in operation, in respect of any of the matters covered by the settlement or award.

(7) No notice under sub-section (6) of the proposed lock-out shall be necessary where there is already in existence a strike in the industrial establishment or undertaking, but the employer shall give intimation of such lock-out to the appropriate Government in the prescribed manner.

(8) No notice under sub-section (6) of the proposed lock-out shall be valid unless such notice is given—

(a) where the industrial establishment or undertaking belongs to a company within the meaning of the Companies Act, 1956, in pursuance of a decision of the board of directors of the company;

1 of 1956.

(b) where the industrial establishment or undertaking belongs to a partnership firm in pursuance of a decision at a meeting of the partners;

(c) where the industrial establishment or undertaking belongs to any other association of persons, in pursuance of a decision of the committee (by whatever name called) managing the affairs of that body of persons; and

(d) where the industrial establishment belongs to a Hindu undivided family or an individual, by the *karta* of the Hindu undivided family or the individual, as the case may be.

(9) The notice of strike referred to in sub-section (2) shall be given to such person or persons and in such manner as may be prescribed and the notice of lock-out referred to in sub-section (6) shall be given in such manner as may be prescribed.

(10) If the employer receives from any negotiating agent notice or notices referred to in sub-section (2) or gives to any person employed by him notice or notices referred to in sub-section (6), he shall, within five days of the receipt or giving, as case may be, of such notice or notices intimate, in such manner as may be prescribed, the appropriate Government or such authority as may be prescribed and the Conciliation Officer having jurisdiction in relation to the industrial establishment or undertaking, the number of such notice or notices received or given by him on that date.

Power to prohibit continuance of strike or lock-out.

91. Where an industrial dispute or any matter appearing to be connected with, or relevant to, the dispute has been referred to, or is pending before,—

(a) an arbitrator, where such dispute is not a dispute referred to for arbitration under sub-section (2) of section 7, or a Court of Inquiry or Labour Court or Tribunal, the appropriate Government; or

(b) an arbitrator, where such dispute is a dispute referred to for arbitration under sub-section (2) of section 7, or a National Commission, the Central Government,

may, by order, prohibit the continuance of any strike or lock-out, in connection with such dispute or matter, which may be in existence on the date of the reference.

Illegal strikes and lock-outs.

92. (1) A strike or lock-out shall be illegal if—

(a) it is commenced or declared in contravention of section 90; or

(b) it is continued in contravention of an order made under section 91.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced or is in existence at the time of the reference

of the dispute to an arbitrator, a Labour Court, a Tribunal or the National Commission, the continuance of such strike or lock-out shall not be deemed to be illegal provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under section 91.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

93. (1) Where there is a dispute as to whether any strike or lock-out is illegal, either the employer concerned or the negotiating agent in relation to the employees locked out may apply to the Labour Court, within the local limits of whose jurisdiction the strike or lock-out has taken place, or the appropriate Government may make a reference to such Labour Court, requesting the Labour Court to adjudicate the dispute and the Labour Court shall adjudicate the dispute and the decision of the Labour Court shall be final.

Consequences of illegal strike or lock-out.

(2) Where the Labour Court on an application or a reference made to it under sub-section (1), finds that any strike or lock-out is illegal and any person has taken part in or has instigated or otherwise abetted such strike or lock-out, as the case may be, or where any person has been convicted under section 136, section 137 or section 138, the Labour Court may, by order, direct that such person shall be disqualified for being, or being chosen as, an office-bearer of a registered trade union of employees or chairman or member of a negotiating committee or, as the case may be, registered trade union of employers, for such period not exceeding two years as may be specified in the order.

(3) Where the Labour Court on an application or a reference made to it under sub-section (1), finds that any strike is illegal and that a registered trade union of employees has given the call for such strike or where any registered trade union of employees has been convicted under section 137, the Labour Court may, having regard to all the circumstances of the case (including an earlier finding of the Labour Court that such trade union had given call for illegal strike and the refusal of the trade union to arrive at a settlement in respect of the matters in dispute by negotiations under section 97, conciliation under section 98, arbitration under section 100 or adjudication by mutual agreement under section 101, as the case may be) by order, direct that the certificate of registration of the trade union of employees shall be cancelled.

(4) Where the Labour Court, on an application or reference made to it under sub-section (1), finds that any lock-out is illegal and that a registered trade union of employers has given the call for such lock-out or where any registered trade union of employers has been convicted under section 137, the Labour Court may, having regard to all the circumstances of the case (including an earlier finding of the Labour Court that such trade union had given call for illegal lock-out) by order, direct that the certificate of registration of the trade union of employers shall be cancelled.

(5) The order of the Labour Court under sub-section (1) shall be binding on—

(a) all the parties to the complaint or reference, as the case may be;

(b) every employee of the industrial establishment or undertaking; or

(c) in the case of an employer in relation to an industrial establishment or undertaking, who is a party to the complaint or reference, as the case may be, on his heirs, successors or assignees in respect of such industrial establishment or undertaking.

(6) No order shall be made by the Labour Court under sub-section (2), sub-section (3) or sub-section (4), unless the person, registered trade union of employees or registered trade union of employers concerned has been given a reasonable opportunity of being heard.

(7) Every order made by the Labour Court under this section shall be final.

(8) Where the Labour Court passes an order under sub-section (2), sub-section (3) or sub-section (4), it shall forward a copy of the order to the Registrar.

Strike or lock-out not to terminate relationship between employer and employee.

94. For the removal of doubts it is hereby declared that a strike or lock-out, whether illegal or otherwise, shall not by itself be deemed to terminate the relationship between the employer and the employees concerned.

Prohibition of financial aid to illegal strikes and lock-outs.

95. No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

CHAPTER IX

PROCEDURE FOR SETTLEMENT OF DISPUTES

Parties to an industrial dispute—interpretation of the expression in certain cases.

96. In this Chapter and Chapter XI parties to an industrial dispute between employer or employers and his or their employees means the employer or employers, as the case may be, and—

(a) where a registered trade union of employees or a negotiating committee has been certified as a sole negotiating agent in relation to such employees, such sole negotiating agent; or

(b) where a registered trade union of employees has been certified as chief negotiating agent in relation to such employees, such chief negotiating agent;

Provided that where there is a registered trade union of employees certified as local union in relation to the employees of a local unit, in respect of any industrial dispute raised by it under clause (a) of section 69, such local union shall be deemed to be a party to the industrial dispute.

97. (1) Subject to the other provisions of this Act, if an industrial dispute arises or is apprehended between the employees of a negotiating unit and the employer or employers employing such employees, the sole negotiating agent or chief negotiating agent, as the case may be, in relation to such employees, may intimate, in writing, the employer or employers, as the case may be, the particulars of the dispute and request such employer or employers to commence negotiations for the settlement of the dispute.

Bipartite
negotia-
tions.

(2) The employer or employers, as the case may be, shall commence negotiations with the sole negotiating agent or chief negotiating agent, as the case may be, within fifteen days of the receipt of the intimation under sub-section (1):

Provided that in any negotiation between the employer or employers, as the case may be, and the chief negotiating agent, for the settlement of any industrial dispute the associate union or associate unions, if any, in relation to the employees of the negotiating unit shall be entitled to be associated with such chief negotiating agent.

(3) Where as a result of the negotiations under sub-section (2) a settlement is arrived at, the terms of the settlement shall be recorded in writing (the terms so recorded being hereinafter referred to as the memorandum of settlement) and signed by the employer or employers or the authorised representative of the employer or employers and the authorised representative of the sole negotiating agent or the chief negotiating agent, as the case may be.

(4) Copies of the memorandum of settlement arrived at under sub-section (3) shall, within such time as may be prescribed, be forwarded by the employer or the employers, as the case may be, to such authorities as may be prescribed.

(5) Every memorandum of settlement arrived at under sub-section (3) shall be registered in the prescribed manner by the parties to the industrial dispute, with the Conciliation Officer having jurisdiction in relation to the negotiating unit.

(6) Every settlement arrived at under sub-section (3) shall come into operation on such date as may be agreed upon by the parties to the dispute and, if no date is agreed upon, on the date on which the memorandum of settlement is signed and such settlement shall operate for such period (being not less than two years) as may be specified in the settlement and shall continue to operate after the expiry of the period aforesaid until the expiry of sixty days from the date on which a notice in writing of the intention to terminate the settlement is given by the employer to the negotiating agent or *vice versa*.

(7) A settlement arrived at under sub-section (3) shall, so long as it is in operation, be binding on all the employees of the negotiating unit and the employer or, where there are more than one employer employing such employees, on all such employers and also on the heirs, successors and assignees of such employer or employers and all persons who may subsequently become employees of such negotiating unit.

(8) Every settlement arrived at under sub-section (3) may provide that if any difficulty or doubt regarding the interpretation of any pro-

vision thereof arises, it shall be referred to for arbitration by either party to the settlement and where a settlement makes any such provision it shall also specify the arbitrator or arbitrators to whom the dispute shall be referred for arbitration and how the arbitrator or arbitrators shall be chosen.

(9) The arbitrator or arbitrators to whom any difficulty or doubt is referred under sub-section (8) shall, after giving the parties a reasonable opportunity of being heard, decide the question and such decision shall be final.

Conciliation of dispute.

98. (1) Where no settlement has been arrived at in the course of negotiations under section 97 or such negotiations have continued for a period of more than sixty days without arriving at any settlement and, in either case, the parties to the dispute do not agree to refer the dispute to a mutually agreed arbitrator under section 100 or for adjudication under section 101, the parties jointly or separately—

(a) shall—

(i) in a case where the dispute relates to an essential service; or

(ii) in a case where the dispute does not relate to an essential service but a notice of strike under clause (a) of sub-section (2) of section 90 or a notice of lock-out under clause (a) of sub-section (7) of that section has been given; and

(b) may, in any other case,

forward in the prescribed manner a report to the Conciliation Officer having jurisdiction in relation to the dispute and the appropriate Government, regarding the failure of negotiations or the continuance thereof as aforesaid along with the facts of the dispute:

Provided that the parties to the industrial dispute may agree to continue the negotiations under section 97 for such further period beyond the aforesaid period of sixty days as may be agreed upon and in such a case such report in the cases referred to in clause (a) shall and, in the cases referred to in clause (b) may, be forwarded to the Conciliation Officer on the expiry of such further period.

(2) On receipt of the report referred to in sub-section (1), the Conciliation Officer, in the cases referred to in clause (a) of sub-section (1) shall and, in other cases, may, commence conciliation proceedings in the prescribed manner.

(3) The Conciliation Officer on commencing conciliation proceedings shall, for the purpose of bringing about a settlement of the dispute, investigate into the dispute and all matters affecting the merits thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(4) If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Conciliation Officer shall send a report thereof to the appropriate Government or to such officer as may be authorised in this behalf by the appropriate Government, together with a memorandum of the settlement signed by the parties to the dispute or their authorised representatives.

(5) If no such settlement is arrived at within the time fixed by or under sub-section (6), the Conciliation Officer shall, as soon as practicable after the close of the investigation, forward to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, the settlement could not be arrived at:

Provided that no report regarding the failure of conciliation proceedings need be forwarded by the Conciliation Officer to the appropriate Government under this sub-section where, in the course of conciliation proceedings, the parties to the dispute agree to refer the dispute for arbitration under section 100 and sign an agreement to that effect in the prescribed manner; but, in such a case, the Conciliation Officer shall send report thereof to the appropriate Government or to such officer as may be authorised in this behalf by the appropriate Government, together with a copy of the arbitration agreement.

(6) The report referred to in sub-section (5) shall be submitted by the Conciliation Officer before the expiry of sixty days from the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that, subject to the approval of the appropriate Government, the Conciliation Officer may continue the conciliation proceedings beyond such period of sixty days or shorter period, if all the parties to the dispute agree therefor and in such a case the report referred to in sub-section (5) shall be submitted within such further period as may be agreed to by all the parties to the dispute:

Provided further that an agreement arrived at in the course of conciliation proceedings shall not be deemed to be invalid merely because it was arrived at after the expiry of the period fixed by or under this sub-section or such further period as may be agreed to by all the parties to the dispute under the preceding proviso.

(7) As soon as may be after the report referred to in sub-section (5) has been forwarded by the Conciliation Officer to the appropriate Government, he shall give intimation thereof to all the parties to the dispute.

(8) The appropriate Government shall, before the expiry of a period of sixty days from the date of the receipt of the report—

(a) consider whether there is a case for reference to the Labour Court or Tribunal; and

(b) if on such consideration of the report, the appropriate Government is satisfied that there is a case for such reference it shall proceed to make the reference in the manner provided in section 104.

(9) A settlement arrived at in the course of conciliation proceedings shall be binding and enforceable in the same manner as a settlement arrived at during negotiations under section 97 and sub-section (3), sub-section (4), sub-section (5), sub-section (6) and sub-section (7), of that section shall apply to a settlement arrived at in the course of conciliation proceedings as if it were a settlement arrived at in the course of negotiations under that section.

Conciliation Officer may assist in bipartite negotiations.

Arbitration of disputes.

99. Where any party to an industrial dispute, individual dispute or trade union dispute makes a request to a Conciliation Officer having jurisdiction to assist that party in negotiations for settlement of the dispute, the Conciliation Officer may render such assistance as may be necessary to bring about a settlement among the parties to the dispute.

100. (1) Where no settlement is arrived at in the course of any negotiations under section 97 or conciliation proceedings under section 98, and the parties to the dispute agree to refer the dispute for arbitration, they shall enter into an agreement for arbitration in such form and such manner as may be prescribed which shall specify the name of the arbitrator to whom the dispute shall be referred for arbitration and the terms of reference and a copy each of such agreement shall be forwarded by the employer to the Conciliation Officer having jurisdiction and to the appropriate Government.

(2) The appropriate Government shall, within thirty days of the receipt of the copy of the arbitration agreement under sub-section (1), refer the dispute for arbitration to the arbitrator agreed upon by the parties to the dispute:

Provided that in any case referred to in sub-section (2) of section 7, the dispute may be referred to a single arbitrator or body of arbitrators appointed by the Central Government.

(3) Where an industrial dispute has been referred to a Labour Court, Tribunal or National Commission for adjudication and the parties to that dispute agree in writing for the withdrawal of such reference and reference of the dispute for arbitration by such arbitrator as may be specified in the agreement and forward a copy of such agreement to the appropriate Government or the Central Government, as the case may be, that Government may withdraw the reference of the dispute from the Labour Court, Tribunal or National Commission, as the case may be, and refer the dispute for arbitration by the arbitrator so specified.

(4) Where an arbitration agreement seeks to refer the dispute to a body of even number of arbitrators, or where the Central Government, by order, appoints a body of even number of arbitrators under sub-section (2) of section 7, the agreement or order, as the case may be, shall specify the umpire who shall enter upon the reference if the arbitrators are equally divided in their opinion and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(5) The arbitrator shall investigate the dispute and, after hearing the parties, make an award and pronounce it in the manner provided in section 118.

(6) Nothing in the Arbitration Act, 1940, shall apply to any arbitration under this section.

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Reference of industrial dispute for adjudication when agreed to by parties.

101. Notwithstanding anything contained in this Act, where both the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for the reference of an industrial dispute specified in the application for adjudication, the appropriate Government, if satisfied that the persons applying represent the negotiating agent and the employer or the majority of employers, as the case may be, shall make a reference in accordance with the application to the Labour Court, where the dispute relates to a matter specified in the Second

Schedule, or to a Tribunal, where the dispute relates to a matter specified in the Third Schedule.

102. Where the appropriate Government on receipt of the failure of conciliation report referred to in sub-section (5) of section 98 or otherwise is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order, refer any matter appearing to be connected with, or relevant to, the dispute to a Court of Inquiry for investigation and report.

Reference of any matter to a Court of Inquiry for investigation.

103. (1) If an individual dispute arises, the employee or any or all of the employees concerned or any registered trade union of employees of which such employee or employees, as the case may be, is a member or are members may refer the dispute to the grievance settlement authority, set up by the employer in accordance with the rules made under this Act, for its decision.

Procedure for settlement of individual disputes.

(2) Where the decision of the grievance settlement authority is not acceptable to any of the parties to an individual dispute, the parties to the dispute may refer the dispute for arbitration to a mutually agreed arbitrator.

(3) The provisions of section 100 shall, so far as may be, apply to the arbitration of any individual dispute referred for arbitration under sub-section (2).

(4) Where the decision of the grievance settlement authority is not acceptable to any of the parties to the dispute and either party or both the parties to the dispute is or are not agreeable to refer the dispute to a mutually agreed arbitrator, the aggrieved party may apply, in the prescribed manner, to the Labour Court for adjudication of the dispute.

(5) Notwithstanding anything contained in this section, if any individual dispute arises in respect of the termination of the employment of any employee or the discharge or dismissal of such employee by way of punishment, such employee may apply, in the prescribed manner, to the Labour Court for adjudication of the dispute without referring the dispute to the grievance settlement authority referred to in sub-section (1) or for arbitration.

(6) No application shall be made under sub-section (4) or sub-section (5) to the Labour Court after the expiry of one year from the final decision of the grievance settlement authority:

Provided that the Labour Court may entertain an application under sub-section (4) or sub-section (5) after the expiry of the aforesaid period—

(a) if the Labour Court is satisfied that the delay in making the application is for reasons beyond the control of the party making the application;

(b) if the parties to the dispute make the application jointly and agree that the application may be entertained notwithstanding the expiry of the aforesaid period of one year.

(7) Notwithstanding anything contained in sub-section (6), the appropriate Government may, on being satisfied that it is necessary so to do

in the interests of industrial peace or justice, refer an individual dispute to the Labour Court for adjudication at any time after the decision of the grievance settlement authority.

(8) On receipt of an application under sub-section (4) or sub-section (5), or a reference under sub-section (6), the Labour Court shall proceed to adjudicate the dispute as if such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication.

Reference
of indus-
trial dis-
pute for
adjudi-
cation.

104. (1) On receipt of a report under sub-section (5) of section 98 by the appropriate Government or where the appropriate Government is of opinion that any industrial dispute exists or is apprehended and, in either case, no other proceedings under this Act in respect of the dispute have commenced and have not concluded, it may, at any time, by order,—

(a) if the dispute relates to any matter specified in the Second Schedule, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to a Labour Court for adjudication; or

(b) if the dispute relates to any matter specified in the Third Schedule, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Tribunal for adjudication.

(2) Notwithstanding anything contained in sub-section (1), where the appropriate Government is of opinion that an industrial dispute exists or is apprehended in an essential service, the appropriate Government shall, on the receipt of a report under sub-section (5) of section 98, make a reference of the dispute for adjudication to the Labour Court or Tribunal, as the case may be.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), where the Central Government is of opinion, either on a request made in that behalf by the appropriate Government (being a State Government) or otherwise, that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments or undertakings situated in more than one State are likely to be interested in or affected by, such dispute and that the dispute should be adjudicated by a National Commission, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order, refer the dispute or any matter appearing to be connected with, or relevant to the dispute to a National Commission for adjudication.

(4) No dispute shall be referred for adjudication under this section where the parties to the dispute agree to refer the dispute for arbitration under section 100.

(5) Where on receipt of a report under sub-section (5) of section 98, the appropriate Government does not make a reference of the industrial dispute (not being an industrial dispute relating to an essential service) or any matter appearing to be connected with, or relevant to, the dispute, it shall communicate to the parties concerned, within sixty days of the receipt of such report, the reasons therefor.

(6) Where any reference has been made under sub-section (3) to a National Commission, then, notwithstanding anything contained in this Act,—

(a) if, on the date of such reference, any negotiation under section 97 or conciliation under section 98 for the settlement of the dispute is pending, such negotiation or conciliation shall abate;

(b) no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Commission, and accordingly,—

(i) if the matter under adjudication before the National Commission is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Commission; and

(ii) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Commission to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Commission.

Explanation.—In this sub-section, “Labour Court” or “Tribunal” includes any court, tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Commission, then, notwithstanding anything contained in this Act, any reference in sub-section (2) of section 115 and sub-section (3) of section 118 and section 122, to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

105. The provisions of this Chapter shall apply in relation to an industrial dispute that may be raised by a local union under clause (a) of section 69, in the same manner as it applies in relation to an industrial dispute that may be raised by a sole negotiating agent.

Applicability of provisions to industrial disputes raised by local unions.

106. The provisions of section 98, section 100, section 101 and section 104 shall, so far as may be, apply in relation to an industrial dispute between employees and employees or between employers and employers in the same manner as they apply in relation to an industrial dispute between an employer and his employees.

Settlement of industrial dispute between employees and employees and employers and employers.

CHAPTER X

UNFAIR PRACTICE

Prohibition of unfair practice.

107. No employer or employee or trade union, whether registered under this Act or not, shall commit any unfair practice.

Procedure on complaints relating to unfair practices.

108. (1) Where any trade union has committed, or is committing, any unfair practice, any employee or employer or registered trade union or the appropriate Government or an officer of that Government specially authorised in this behalf may,—

(a) in a case where such unfair practice is a continuing one, at any time before the expiry of ninety days from the cesser of such continuance; or

(b) in any other case, within ninety days from the date on which such unfair practice was committed,

make a complaint to the Tribunal specially authorised in this behalf by the appropriate Government:

Provided that the Tribunal may entertain a complaint after the expiry of the aforesaid period, if for good and sufficient reason shown by the complainant the Tribunal is satisfied that the delay in making the complaint was for reasons beyond the control of the complainant.

(2) On receipt of the complaint referred to in sub-section (1), the Tribunal shall forward a copy thereof to the trade union, which is alleged to have committed the unfair practice, along with a notice specifying a date and requiring it to appear before the Tribunal on that date to show cause against the complaint.

(3) The Tribunal may, if it so considers necessary, by order, direct—

(a) the Registrar; or

(b) the Chief Labour Commissioner, where the appropriate Government is the Central Government; or

(c) the State Labour Commissioner, where the appropriate Government is the State Government,

to make or cause to be made an investigation into the complaint and make a report on the result of the investigation to the Tribunal, within such time as may be specified in the order or such further time as may be granted by the Tribunal.

(4) The Registrar or the Chief Labour Commissioner or State Labour Commissioner, as the case may be, shall, when so directed by the Tribunal under sub-section (2), make or cause to be made such investigation as he may consider necessary and make efforts to promote a settlement among the parties to the complaint and submit a report to the Tribunal within the time or further time specified under sub-section (3) setting out the full facts and circumstances of the case and the efforts made by him for settling the complaint; and if any settlement has been arrived

at among the parties to the complaint, he shall forward with such report a deed incorporating the terms of the settlement (hereafter in this Chapter referred to as the settlement deed).

(5) If on the receipt of the report referred to in sub-section (4), the Tribunal finds that a settlement has been arrived at among the parties to the complaint in regard to the subject matter of complaint and such settlement is fair and reasonable, it shall record the settlement.

(6) Where on a receipt of the report referred to in sub-section (4), the Tribunal finds that no settlement has been arrived at among the parties to the complaint in regard to the subject matter of the complaint, or that such settlement is not fair and reasonable, it shall, after making such enquiry as may be prescribed and after giving the parties to the complaint a reasonable opportunity of being heard, pass orders as to whether any or all of the unfair practices alleged in the complaint has or have been committed and if so by which of the parties to the complaint.

(7) The finding and the order of the Tribunal under sub-section (6) shall be final.

(8) Where—

(a) a Tribunal finds that an unfair practice has been committed by a registered trade union; or

(b) a registered trade union is convicted of an offence punishable under section 141,

the Tribunal may having regard to all the circumstances of the case (including the nature of the unfair practice and an earlier finding, if any, regarding the commission of any unfair practice by the trade union) by order, direct that the registration of the trade union shall be cancelled:

Provided that no order shall be made under this sub-section unless the trade union concerned has been given a reasonable opportunity of being heard.

(9) A copy of the order under sub-section (8) shall be forwarded by the Tribunal to the Registrar.

(10) The Tribunal shall pass orders under sub-section (6) and sub-section (8) within ninety days from the date on which it received the complaint.

109. The order of the Tribunal under sub-section (6) or sub-section (8) of section 108 shall be binding on—

(a) all the parties to the complaint;

(b) in the case of an employer in relation to an industrial establishment or undertaking who is a party to the complaint, on his heirs, successors or assignees in respect of such industrial establishment or undertaking; and

Persons on whom the order under sub-sections (6) and (8) of section 108 shall be binding.

(c) in the case of a trade union which is a party to the complaint, on all persons who are members of the trade union on the date on which the complaint is made and on all persons who may become such members after such date; and where the trade union is a trade union of employers, also on the heirs, successors or assignees, of every member of such trade union, in respect of the industrial establishment or undertaking in relation to which such member is the employer.

CHAPTER XI

PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

Adjudicating authorities to determine their procedure subject to the provisions of the Act and the rules.

110. Subject to the provisions of this Act, and any rules made thereunder—

(a) by the appropriate Government, in the case of an arbitrator, a Court of Inquiry, Labour Court or Tribunal; or

(b) by the Central Government, in the case of a National Commission,

an arbitrator or a Court of Inquiry, Labour Court, Tribunal or National Commission shall follow such procedure as he or it thinks fit.

Power to summon witnesses, to inspect premises, etc.

111. (1) Every arbitrator, Presiding Officer of a Labour Court, Tribunal or National Commission or chairman or member of a Court of Inquiry shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses; and

(d) such other matters as may be prescribed;

and every enquiry or investigation by an arbitrator, a Presiding Officer of a Labour Court, Tribunal or National Commission or Chairman or member of a Court of Inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

(2) A Conciliation Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person;

(b) examining any person:

Provided that such examination shall not be on oath;

(c) compelling the production of documents and material objects; and

(d) in respect of such other matters as may be prescribed.

(3) A Conciliation Officer, a single arbitrator or member of a body of arbitrators, Presiding Officer of a Labour Court, Tribunal or National Commission or chairman or member of a Court of Inquiry, for the purpose of enquiring into any matter connected with any existing or apprehended industrial dispute, individual dispute or trade union dispute, may, after giving reasonable notice (not being less than twenty-four hours), enter the premises in which any establishment or industrial undertaking or the office of a trade union, to which the dispute relates, is situated.

112. (1) Where on the day fixed for the hearing of any dispute or any other proceeding, pending before a Labour Court, Tribunal or National Commission, any of the parties to the dispute or other proceeding, having notice of the hearing does not appear, the Labour Court, Tribunal or National Commission, as the case may be, may proceed with the hearing of the dispute or other proceeding notwithstanding the absence of such party and, where it does so, it shall have the same powers in relation to the making of any award or determining or deciding any question as it would have had such party appeared as aforesaid.

Power of
Labour
Court,
etc., to
proceed
in absence
of parties
to dispute.

Explanation.—In this sub-section “day fixed for hearing” includes the day fixed for the appearance of any party, filing of any statement, examination of witnesses, production of documents, hearing of arguments or the doing of any other thing by the party concerned or his authorised representative in connection with the adjudication of the dispute or other proceeding.

(2) Where any party to a dispute or other proceeding to whom time has been granted for producing his evidence, or causing attendance of witnesses, or performing any other act necessary for the further progress of the adjudication of the dispute or other proceeding fails to do so within the time so granted, the Labour Court, Tribunal or National Commission, as the case may be, may, notwithstanding such failure,—

(a) if the parties are present, proceed to adjudicate the dispute or other proceeding forthwith; or

(b) if any of the parties is absent, proceed under sub-section (1).

(3) Where any of the parties to the dispute or other proceeding, who fails to appear, or to do any act referred to in sub-section (2) within the time allowed therefor, subsequently satisfies the Labour Court, Tribunal or National Commission, as the case may be, within such time as may be prescribed, that there was sufficient cause for his non-appearance or for such failure, it may make such order as it considers just and proper in the circumstances of the case (including an order setting aside any award or order made and directing re-hearing of the dispute or other proceeding) subject to such conditions (including a condition as to payment of costs) as it may think fit to impose.

Appoint-
ment of
assessors
to assist
Court
of In-
quiry,
etc.

Power
to grant
interim
reliefs.

113. An arbitrator, a Court of Inquiry, Labour Court, Tribunal or National Commission may, if he or it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor to advise him or it in the proceeding before such arbitrator, Court of Inquiry, Labour Court, Tribunal or National Commission, as the case may be.

114. It shall be lawful for the Labour Court, Tribunal or National Commission to grant to any party to any proceeding in relation to any individual dispute, industrial dispute or trade union dispute pending before it, such interim reliefs (whether subject to any conditions or not) including stay of any order, issue of injunction or direction in regard to payment of wages or subsistence allowance, as it deems just and proper in the circumstances of the case:

Provided that the Labour Court, Tribunal or National Commission shall not grant any such interim relief unless all the parties to the proceeding have been served with a notice on the application for such interim relief and have been given a reasonable opportunity of being heard:

Provided further that the Labour Court, Tribunal or National Commission may, having regard to the nature of the interim relief sought and the circumstances of the case pass appropriate orders granting such interim relief as it deems just and proper in the circumstances of the case before the notice referred to in the preceding proviso is served on the parties to the proceeding:

Provided also that where the Labour Court, Tribunal or National Commission makes any order under the proviso immediately preceding, it shall record the reasons for making the order before complying with the requirements specified in the first proviso.

Power to
transfer
proceed-
ings.

115. (1) Where any proceeding relating to the adjudication of any individual dispute is pending before a Labour Court, the appropriate Government on an application made to it in that behalf by any party to such proceeding and after notice to the other party or parties to such proceeding, and after hearing such of them as desire to be heard, may, at any stage, by order and for reasons to be stated therein, transfer the proceeding to another Labour Court.

(2) The appropriate Government may, by order and for reasons to be stated therein, withdraw any proceeding relating to the adjudication of any industrial dispute or trade union dispute or any other proceeding under this Act, other than a proceeding referred to in sub-section (1), pending before any Labour Court, Tribunal or National Commission and transfer the same to another Labour Court, Tribunal or National Commission, as the case may be, for the disposal of such proceeding.

(3) The Labour Court, Tribunal or National Commission, as the case may be, to which a proceeding is transferred under sub-section (1) or sub-section (2) may, subject to any special directions in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred.

Power of
Labour
Court to
give
proper
relief in

116. Where any application has been made to the Labour Court for adjudication of an individual dispute relating to the discharge or dismissal of an employee under sub-section (1) of section 103, or where any such dispute has been referred by the appropriate Government to the Labour Court for adjudication under sub-section (1) of section 104 and,

in either case, the Labour Court is satisfied, whether on the basis of the records of the proceeding that led to the discharge or dismissal of such employee or on the basis of additional evidence produced before such Labour Court, that the order of discharge or dismissal was not justified, the Labour Court may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the employee on such terms and conditions, if any, as it may think fit, or give such other relief to the employee, including the imposition of a lesser punishment in lieu of discharge or dismissal, as it appears to the Labour Court to be just and proper in the circumstances of the case.

case of
discharge
or dis-
missal of
em-
plo-
yees.

117. (1) The report of a Court of Inquiry shall be in writing and shall be signed by the person who constitutes the Court of Inquiry or, where the Court of Inquiry consists of more than one person, by the chairman and the remaining member or members thereof:

Form of
report of
Court of
Inquiry
and its
publica-
tion.

Provided that nothing in this sub-section shall be deemed to prevent any member of the Court of Inquiry from recording any minute of dissent from the report of the Court of Inquiry or from any recommendation made thereunder.

(2) Every report of a Court of Inquiry together with the minute of dissent, if any, recorded by any member thereof shall be published within a period of thirty days from the date of its receipt by the appropriate Government, in such manner as that Government may think fit.

118. (1) Every award or other determination or decision by an arbitrator or a Labour Court, Tribunal or National Commission shall be pronounced on a date of which notice has been given to the parties to the dispute and shall be dated and signed by the person or persons pronouncing the award and when once signed shall not thereafter be altered or added to, save as provided in this Act.

Pronoun-
cement of
award
by arbi-
trator,
Labour
Court,
etc.

(2) The award of an arbitrator shall be pronounced in his office and the award of a Labour Court, Tribunal or National Commission shall be pronounced in the open court.

(3) A copy of every award or other determination or decision referred to in sub-section (1), certified in such manner as may be prescribed, shall be given by the arbitrator, Labour Court, Tribunal or National Commission, as the case may be, to each of the parties to the dispute free of cost and a copy of the award or other determination or decision so certified shall be sent by the arbitrator, Labour Court, Tribunal or National Commission, as the case may be, to the appropriate Government.

119. (1) A Court of Inquiry shall submit its report, on the matters referred to it, to the appropriate Government ordinarily within a period of one hundred and eighty days from the commencement of its inquiry or within such further period as may be allowed by the appropriate Government from time to time.

Time
limit for
submis-
sion of
report,
making
of award,
etc.

(2) The Labour Court shall pronounce its award ordinarily within a period of ninety days from the date on which the application is made, or the dispute is referred, to it.

(3) The Tribunal or National Commission shall pronounce its award ordinarily within a period of one hundred and eighty days from the date on which the dispute is referred to it.

(4) Where the Labour Court, Tribunal or National Commission is unable to make its award within the periods referred to in sub-section (2) or sub-section (3), as the case may be, it shall record the reasons therefor.

Date on
which
award be-
comes en-
forceable.

120. (1) Every award referred to in sub-section (1) of section 118 shall become enforceable on the expiry of thirty days from its pronouncement:

Provided that—

(a) if the appropriate Government is of opinion, in case where the award has been given by an arbitrator or a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion in case where the award has been given by a National Commission,

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government or, as the case may be, the Central Government, may, by notification, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government, as the case may be, may within ninety days from the date of the award, by notification, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award and a copy of such order (where any such order has been made) before the Legislature of the State, if the order has been made by the State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award is rejected by the appropriate Government or the Central Government, as the case may be, under sub-section (2), it shall not be enforceable.

(4) Where any award is modified by an order made under sub-section (2), such award as so modified shall become enforceable on the expiry of fifteen days from the date on which the order making the modification is published in the Official Gazette.

(5) Where a declaration under the proviso to sub-section (1) has been made but no order is made under sub-section (2), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(6) Subject to the provisions of sub-sections (3), (4) and (5) regarding enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, and where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (4) or sub-section (5), as the case may be.

Persons
on whom
awards
are
binding.

121. (1) The award of an arbitrator which has become enforceable under section 120 shall be binding on—

(a) the parties to the agreement in pursuance of which the dispute was referred to for arbitration; and

(b) where a negotiating agent is a party to the agreement and the agreement is in respect of an industrial dispute, on all the employees of the negotiating unit in relation to whom the registered trade union of employees or negotiating committee has been certified as negotiating agent.

(2) An award of a Labour Court, Tribunal or National Commission which has become enforceable under section 120 shall be binding on—

(a) all the parties to the individual dispute, industrial dispute or trade union dispute;

(b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Labour Court, Tribunal or National Commission, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assignees in respect of the industrial establishment or undertaking to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is a negotiating agent, all persons who were employees of the negotiating unit on the date of the dispute and all persons who subsequently become employees of the negotiating unit; and

(e) where a party referred to in clause (a) or clause (b) is a local union and the dispute is an industrial dispute in respect of any matter referred to in clause (a) of section 69, on all persons who were employees, on the date of the dispute, of the industrial establishment or undertaking or unit, branch or office of an industrial establishment or undertaking, in relation to the employees employed wherein the registered trade union of employees has been certified as a local union; and all persons who subsequently become employees of such industrial establishment or undertaking or unit, branch or office.

122. (1) Every award of an arbitrator or a Labour Court, Tribunal or National Commission shall, subject to the provisions of this section, remain in operation for a period of two years from the date on which the award becomes enforceable:

Period of operation of award.

Provided that the appropriate Government may, by notification and for reasons to be stated therein, before the expiry of the said period of two years, extend the period of operation of the award by any period not exceeding one year at a time, as it thinks fit; so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(2) Where the appropriate Government, after one year of the enforcement of the award, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may, after giving the parties bound by the award a reasonable opportunity of being heard, shorten the period of operation of the award.

(3) Nothing contained in sub-section (1) shall apply to any award which by its nature, terms or other circumstances, does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(4) Notwithstanding the expiry of the period of operation referred to in sub-section (1), or the shortened period under sub-section (2), the award shall continue to be binding on the parties until a period of sixty days has elapsed from the date on which notice in writing is given by any party bound by the award to the other party or parties, as the case may be, intimating its intention to terminate the award.

(5) No application made under sub-section (2) or notice given under sub-section (4) shall be entertained or be valid in the case of an industrial dispute, unless it is made or given--

(a) where such dispute is between employees and the employer or employers, by the negotiating agent, or the employer or, where more than one employers are bound by the award, by the majority of such employers; or

(b) where dispute is between employees and employers or employers and employees by the majority of any of the parties bound by the award.

Review
of award
by
Labour
Court,
Tribunal
or
National
Commis-
sion and
correc-
tion of
mistakes.

123. (1) Any party to an individual dispute, industrial dispute or trade union dispute, who, on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of an award made by a Labour Court, Tribunal or National Commission, may apply to such authority and where such authority, after giving all the parties to the individual dispute, industrial dispute or trade union dispute, as the case may be, a reasonable opportunity of being heard is of the opinion that the application for review should be granted, it shall grant the same.

(2) Clerical or arithmetical mistakes in awards or errors arising therein from any accidental slip or omission may, at any time, be corrected by the arbitrator, Labour Court, Tribunal or National Commission, as the case may be, either of its own motion or on the application of any of the parties to the dispute or the appropriate Government.

Award of
costs.

124. Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before, an arbitrator or a Labour Court, Tribunal or National Commission shall be in the discretion of the arbitrator, Labour Court, Tribunal or National Commission, and the arbitrator, Labour Court, Tribunal or National Commission, as the case may be, shall have full power to determine by whom, to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purpose aforesaid and such costs may be recovered under section 125 in the same manner as if it were money due under any settlement or award.

Execu-
tion of
settle-
ment or
award by
Labour
Court,
etc.

125. (1) Every award or determination or decision of a Labour Court, Tribunal or National Commission shall be executed by the authority which made it, in such manner as may be provided by or under this Act.

(2) Every award of the arbitrator or a settlement arrived at in the course of negotiations under section 97 or conciliation under section 98 shall be executed by the Labour Court, in the same manner as if it were an award made by such Labour Court.

126. (1) Where any money is due to any of the parties to a settlement or award, under such settlement or award, such party or any person, in, or on, whom the rights of such party under the settlement or award have been vested or devolved, by assignment, inheritance or otherwise, may, without prejudice to any other mode of recovery, make an application to the Labour Court, Tribunal or National Commission, to whom an application for the execution of the settlement or award may be made under section 125 for the recovery of the money so due to such party and where the Labour Court, Tribunal or National Commission, as the case may be, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue and remit the amount so recovered to the Labour Court, Tribunal or National Commission, as the case may be:

Procedure
for re-
covery of
money
due
under
settle-
ment or
award,
etc.

Provided that every such application shall be made within one year from the date on which the money becomes due to such party:

Provided further that any such application may be entertained after the expiry of the said period of one year if the Labour Court, Tribunal or National Commission, as the case may be, is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) The Labour Court, Tribunal or National Commission, as the case may be, shall disburse or cause to be disbursed in such manner as may be prescribed, the amounts remitted to it by the Collector under sub-section (1) to the person or persons entitled to receive the same.

Explanation.—In this section “parties to a settlement or award” includes, where a negotiating agent or local union is a party to the settlement or award, all employees who are bound by such settlement or award.

127. Where an arbitrator, Labour Court, Tribunal or National Commission, by its award, directs the reinstatement of any employee or employees and the employer does not reinstate such employee or employees, the employee or employees concerned shall be entitled to wages and all other benefits, as if he or they has or have been reinstated—

Employee
entitled
to wages,
etc.,
though
award
for re-
instatement
is not
complied
with,

(a) where the award specifies a date on or before which such employee or employees should be reinstated, with effect from such date; and

(b) in other cases, when the award becomes enforceable.

128. (1) A conciliation proceeding shall be deemed to have commenced on the date on which notice summoning the parties for conciliation has been issued by the Conciliation Officer.

Com-
mence-
ment
and con-
clusion
of pro-
ceedings,
etc.

(2) A conciliation proceeding shall be deemed to have concluded—

(a) where a settlement is arrived at, on the date on which a

memorandum of the settlement is signed by the parties to the dispute; and

(b) where no settlement is arrived at, on the expiry of fifteen days from the submission of a report regarding the failure of conciliation proceedings under sub-section (5) of section 98 to the appropriate Government.

(3) Proceedings before an arbitrator shall be deemed to have commenced when the dispute is referred to the arbitrator for arbitration.

(4) Proceedings before a Labour Court shall be deemed to have commenced when an application is made or a dispute is referred to it for adjudication.

(5) Proceedings before a Tribunal or National Commission shall be deemed to have commenced when the dispute is referred to it for adjudication.

(6) Proceedings referred to in sub-sections (3), (4) and (5) shall be deemed to have concluded on the date on which the award in such proceedings becomes enforceable under section 120.

No demand in regard to same matter to be raised so long as settlement or award is in force.

129. So long as any settlement arrived at in the course of negotiation under section 97 or conciliation under section 98 or any award of an arbitrator or a Labour Court, Tribunal or National Commission is in operation, it shall not be lawful for the employees or employer or employers, as the case may be, to raise any dispute with respect to any matter covered by such settlement or award.

CHAPTER XII

PENALTIES

Penalty for failure to submit statement, making false statement, etc.

130. (1) If default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every office-bearer or other person bound by the rules of the trade union to give or send the same, or, if there is no such office-bearer or person, every member of the executive of the trade union, shall be punishable with fine which may extend to ten rupees and, in the case of a continuing default, with a further fine which may extend to five rupees for each week during which the default continues after the conviction for the first default:

Provided that the aggregate of such fine shall not exceed one hundred rupees.

(2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 44, or in or from any copy of rules or of alteration of rules sent to the Registrar under that section shall be punishable with fine which may extend to five hundred rupees.

Supplying false information regarding trade union.

131. Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he knows or has reason to believe, is not a correct copy of such rule or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered trade union

to any person on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may extend to five hundred rupees.

132. If an employer fails or refuses to recognise a sole negotiating agent or a chief negotiating agent or an associate union or a local union in accordance with the provisions of section 66 or refuses or fails to recognise the rights or to provide the facilities specified in section 67, section 68 or section 69, as the case may be, in regard to such negotiating agent, associate union or local union, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Penalty for failure to recognise negotiating agent, etc.

133. Any person who wilfully discloses—

(a) any information in contravention of the proviso to sub-section (1) of section 67; or

(b) any information as is referred to in section 152,

Penalty for disclosure of confidential information.

shall, on complaint made by or on behalf of the employer or the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

134. An employer who does any act in contravention of the Standing Orders in force in his industrial establishment or undertaking shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, where the contravention is a continuing one with a further fine which may extend to one hundred rupees for every day, during which the contravention continues, after the conviction for the first such contravention.

Penalties for breach of Standing Orders.

135. Any employer who—

(a) changes the terms of employment or conditions of labour of any employee in contravention of section 77; or

(b) alters the terms of employment or conditions of labour of any employee or dismisses, discharges or otherwise punishes any employee for misconduct in contravention of the provisions of section 78; or

(c) contravenes an order made under section 79; or

(d) lays off or retrenches any employee in contravention of the provisions of Chapter VII,

Penalty for lay-off, retrenchment, etc., in contravention of provisions of the Act.

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

136. Any employer who closes down any industrial establishment or undertaking in contravention of the provisions of section 88 shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Penalty for closure of industrial establishment or undertaking in contravention of provisions of section 88.

Penalty
for
illegal
strikes
and
lock-
outs.

137. (1) Any employee who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Penalty
for insti-
gation,
etc.

138. Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Penalty
for
giving
financial
aid to
illegal
strike or
lock-out.

139. Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Penalty
for
breach
of settle-
ment or
award,
etc.

140. Any person who commits a breach of any term of settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, where the breach is a continuing one, with a further fine which shall not be less than one hundred rupees but which may extend to five hundred rupees for every day during which the breach continues after conviction for the first, and the Court trying the offence may direct that the whole or any part of the fine realised from such person shall be paid, by way of compensation to any person who, in its opinion, has been injured by such breach.

Penalty
for com-
mitting
unfair
practice.

141. Any person who commits any unfair practice shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty
for
wrongful
withhold-
ing of
informa-
tion.

142. If an employer or other person—

(a) required by or under this Act to furnish any information or return (not being a general statement or other document referred to in section 120),—

(i) refuses or neglects to furnish such information or return;
or

(ii) furnishes or causes to be furnished any information or return which is false or which he either knows or believes to be false or does not believe to be true; or

(b) refuses or wilfully neglects to afford reasonable facilities for making inspection, examination or inquiry authorised by or under this Act,

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

143. If any person without lawful authority removes, alters, defaces, obliterates or in any way tampers with any notice affixed or displayed in pursuance of this Act he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Penalty for removal, etc., of notice affixed or displayed in pursuance of this Act.

144. Any person who contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Penalty for other offences.

145. (1) No Court shall take cognizance of any offence punishable under this Act, other than an offence punishable under clause (b) of section 133, or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

Cognizance of offences and courts, which may take cognizance of offence.

(2) No Court inferior to that of a Metropolitan Magistrate or Magistrate of the First Class shall try any offence under this Act.

CHAPTER XIII

EXEMPTIONS AND MODIFICATIONS

146. Nothing in this Act shall apply to—

- (a) any hospital, including a dispensary;
- (b) any educational, scientific, research or training institution;
- (c) any organisation exclusively engaged in any charitable, social or philanthropic service; or
- (d) khadi or village industries,

Act not to apply to certain industries.

or to any employee employed therein or any employer in relation thereto.

147. The provisions of the Standing Orders made under sub-section (1) of section 73 or modifications made therein under sub-section (2) of that section and the provisions of section 75 and section 77 shall not apply in the case of employees to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules, the Indian Railway Establishment Code or such other rules or regulations as the appropriate Government may, by notification, specify in this behalf, apply.

Exemption from certain provisions.

148. (1) The State Government may, having regard to the development of trade unionism among such class of employees, by general or special order, declare that the provisions of section 34 shall not apply to trade unions of employees employed in agricultural operations in any area specified in the order or employed in any small scale industry or class of small scale industries in any area specified in the order.

Power of Government to exempt.

(2) The appropriate Government may, having regard to the rules in force in any industrial establishment or undertaking in respect of the matters referred to in sub-section (1) of section 73, by notification and subject to such conditions, if any, that may be specified in such notifica-

tion, exempt any industrial establishment or undertaking or any class of industrial establishments or undertakings from all or any of the provisions of Chapter V.

(3) Where the appropriate Government is of the opinion that the application of the provisions of section 77 to any class of industrial establishments or undertakings or any class of employees employed in any industrial establishment or undertaking is likely to affect prejudicially the employers in relation thereto and that the public interest so requires, the appropriate Government may, by notification, direct that the provisions of the said section shall not apply or shall apply subject to such modifications, as may be specified in the notification to that class of industrial establishments or undertakings or to that class of employees employed in any industrial establishment or undertaking, as the case may be.

(4) Where the appropriate Government is of the opinion that it is inexpedient on public grounds affecting national economy to apply all or any of the provisions of this Act to any industrial establishment or industrial establishments wherein any small scale industry or class of small scale industries, or any industry employing mainly the employer himself, is carried on that Government may, by notification, exempt such industrial establishment or industrial establishments from all the provisions of this Act or such of the provisions of this Act as it is of the opinion shall not apply to such industrial establishment or industrial establishments.

149. Where in any industrial establishment or undertaking any joint consultative machinery consisting of representatives of employees and employers or any other body consisting of one or more persons (by whatever name called) has been set up for the purpose of settling individual disputes or industrial disputes and the appropriate Government is satisfied that the functioning of such joint consultative machinery or other body has been beneficial to the employees employed in such industrial establishment or undertaking, the appropriate Government may, by notification, direct that the provisions of Chapter IV, Chapter IX and Chapter XII shall apply in relation to such industrial establishment or undertaking with such modifications as may be specified in such notification.

CHAPTER XIV

MISCELLANEOUS

150. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Modifica-
tion of
provi-
sions of
Chapters
IV, IX
and XII
in their
applica-
tion to
certain
industrial
establis-
hments or
under-
takings.

Offences
by com-
panies.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individual; and

(b) “director”, in relation to a firm, means a partner in the firm.

151. (1) Subject to the other provisions of this Act, if in the opinion of the appropriate Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal, or National Commission as it may think fit.

Power to remove difficulties in the interpretation of settlement or award.

(2) The Labour Court, Tribunal or National Commission to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final.

152. There shall not be included in any report or award under this Act any information obtained by an arbitrator or a Conciliation Officer or Court of Inquiry or Labour Court or Tribunal or National Commission in the course of any investigation or inquiry relating to a trade union or any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such arbitrator, Conciliation Officer, Court of Inquiry, Labour Court, Tribunal or National Commission, if the trade union, person, firm or company in question has made a request in writing to the arbitrator, Conciliation Officer, Court of Inquiry, Labour Court, Tribunal or National Commission, as the case may be, that such information shall be treated as confidential; nor shall such arbitrator, Conciliation Officer, the Presiding Officer of the Labour Court, Tribunal or National Commission or chairman or other member of the Court of Inquiry or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or of the person, firm or company in question, as the case may be:

Certain matters to be kept confidential.

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code.

45 of 1860.

153. (1) Subject to the other provisions of this Act, every authority (including an arbitrator) or officer who makes any order in writing, other than an award, shall—

Publication, affixation and defacement of notice.

(a) in the case of an order of a general nature or affecting or which is likely to affect a class of persons, publish such order in such manner as may in the opinion of such authority or officer being best adapted for informing the persons affected or likely to be affected by the order;

(b) in the case of an order affecting or which is likely to affect any corporation or firm serve the order or cause the order to be served, in the manner provided for the service of summons in rule 2 of Order XXIX, or rule 3 of Order XXX, as the case may be, of the Code of Civil Procedure, 1908; and

5 of 1908.

(c) in the case of an order affecting or which is likely to affect an individual serve the order or cause the order to be served on that individual—

- (i) personally, by delivering or tendering him the order;
- (ii) by registered post; or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy on some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

(2) If in the course of any proceeding under this Act a question arises whether a person was duly informed of an order made in pursuance of this Act, compliance with sub-section (1) shall be conclusive proof that he was so informed, but a failure to comply with sub-section (1)—

(i) shall not preclude proof that he was so informed by other means; and

(ii) shall not affect the validity of the order.

Power to
require
produc-
tion of
books,
etc.

154. Where any person is required by or under this Act to make any statement or furnish any information to any authority, that authority may by order, with a view to verifying the statement made or the information furnished by such person, require him to produce any books, accounts or other documents relating thereto which may be in his possession or under his control.

Protec-
tion of
action
taken
under the
Act and
protec-
tion of
persons.

155. (1) No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Notwithstanding anything contained in the rules of a trade union or society, no person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from such trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of such trade union or society.

(3) Nothing in the rules of a trade union or society requiring the settlement of dispute in any manner shall apply to any proceeding for enforcing any right secured by this section, and in any such proceeding the Civil Court, may, in lieu of ordering a person who has been expelled from membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

Represen-
tation of
parties.

156. (1) An employee who is a party to any proceeding under this Act, in relation to an individual dispute, shall be entitled to be represented in such proceeding by—

(a) an office-bearer of a registered trade union of employees of which he is a member; or

(b) an office-bearer of a registered trade union which is an association of trade unions of employees of which the trade union referred to in clause (a) is a member.

(2) An employer who is a party to any proceeding under this Act shall be entitled to be represented in such proceeding by—

(a) an office-bearer of a registered trade union of employers of which he is a member;

(b) an office-bearer of a registered trade union which is an association of trade unions of employers of which the trade union referred to in clause (a) is a member; or

(c) where the employer is not a member of any registered trade union of employers, by an office-bearer of any registered trade union of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised by such employer in such manner as may be prescribed.

(3) No party to an individual dispute or industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before an arbitrator.

(4) In any proceeding before a Labour Court, Tribunal, or National Commission, a party to such proceedings may be represented by a legal practitioner only with the consent of the other party or parties to the proceeding and with the leave of the Labour Court, Tribunal or National Commission, as the case may be.

Explanation.—For the purposes referred to in sub-section (1) or sub-section (2), it shall be sufficient that the trade union of employees or employers, as the case may be, referred to therein has been registered in any State under this Act.

157. (1) Where the appropriate Government is satisfied that public interest requires that an industry, which is essential to the life of the community and which is not specified in the First Schedule should be declared as an essential service, it may, by notification, make a declaration to that effect and on such declaration being made the industry so declared shall be deemed to have been included in the First Schedule.

Power to
amend
Sche-
dules.

(2) The appropriate Government may, by notification, omit any industry from the First Schedule and on the issue of such notification the First Schedule shall be deemed to be amended accordingly.

(3) The Central Government may, by notification, add to or alter or amend the Second Schedule, the Third Schedule or the Fourth Schedule and on the issue of any such notification, the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall be deemed to be amended accordingly.

(4) Every notification issued by the State Government under this section shall be laid, as soon as possible after it is issued, before the State Legislature.

(5) Every notification issued by the Central Government under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Delegation of powers.

158. The appropriate Government may, by notification, direct that any power exercisable by it under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

Power to make rules.

159. (1) The appropriate Government may, by notification, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the authority which would be the employer in relation to an industrial establishment or undertaking managed by, or on behalf of, a department of the Central or State Government under sub-clause (a) of clause (12) of section 2;

(b) the quorum for a meeting of a Court of Inquiry, under sub-section (3) of section 8;

(c) the terms and conditions of service of the Presiding Officer of a Labour Court or Tribunal, under sub-section (2) of section 13;

(d) the manner of notifying by the Tribunal of its intention to determine the support of a registered trade union of employees or election to choose the chairman or other members of a negotiating committee and the particulars to be specified in such notice, under sub-section (1) of section 53;

(e) the particulars, of any registered trade union of employees certified as negotiating agent in relation to the employees of a negotiating unit, to be specified in an application by a registered trade union of employees for certification as negotiating agent, under sub-section (1) of section 55;

(f) the particulars of any registered trade union of employees certified as sole negotiating agent to be specified in an application of a registered trade union of employees for certification as a local union under sub-section (2) of section 55;

(g) the form in which an application by a registered trade union of employees for certification as sole negotiating agent, chief negotiating agent, associate union or local union shall be made, the particulars which such application shall contain and the fees which shall accompany such application, under sub-section (3) of section 55;

(h) the manner in which the notice referred to in sub-section (2) of section 59 shall be served;

(i) the procedure in enquiring into an application by a registered trade union of employees for certification as negotiating agent or local union under sub-section (5) of section 59;

(j) the manner of the election of the Chairman and other members of a negotiating committee, the persons qualified to stand for election, the disqualifications for being chosen as and for being such Chairman or other member, the manner of settlement of disputes relating to the election and the filling up of casual vacancies, under sub-section (3) of section 61;

(k) the procedure to be followed for the transaction of business of the negotiating committee (including the quorum for its meetings), under sub-section (5) of section 61;

(l) the constitution and procedure of grievance settlement authority referred to in clause (j) of sub-section (1) of section 67;

(m) form of application or notice, as the case may be, for permission to lay-off employees or for approval of lay-off of employees or to retrench employees or for closure of any industrial establishment or undertaking under section 82, section 83 or section 88, as the case may be;

(n) the manner in which opportunity shall be given to retrenched employees to offer themselves for re-employment, under section 85;

(o) the manner in which intimation of strike or lock-out shall be given to the appropriate Government under sub-section (2) or sub-section (7), as the case may be, of section 90;

(p) the manner in which any dispute pertaining to a strike ballot shall be decided under sub-section (4) of section 90;

(q) the person or persons by whom and the manner in which a notice of strike is to be given, and the manner in which a notice of lock-out is to be given, under sub-section (9) of section 90;

(r) the authority to which an employer shall report the number of notice or notices of strike received by him or notice or notices of lock-out given by him on any day, under sub-section (10) of section 90;

(s) the time within which and the authorities to which the copies of a settlement shall be forwarded by the employer under sub-section (4) of section 97;

(t) the manner in which a memorandum of settlement arrived at under sub-section (3) of section 97 is to be registered with the Conciliation Officer under sub-section (5) of that section;

(u) the manner in which a report is to be submitted to the Conciliation Officer regarding the failure of negotiations or the continuance of negotiations for a period of more than sixty days under sub-section (1) of section 98;

(v) the manner in which conciliation proceedings are to be commenced by the Conciliation Officer under sub-section (2) of section 98;

(w) the manner of applying to the Labour Court for the adjudication of an individual dispute under sub-section (4) of section 103;

(x) the procedure relating to the enquiry referred to in sub-section (6) of section 108;

(y) the manner in which any award, determination or decision of a Labour Court, Tribunal or National Commission is to be executed under section 125;

(z) the manner in which an employer may authorise an office-bearer of any trade union of employers or another employer to represent him in any proceeding under this Act, under clause (c) of sub-section (2) of section 156;

(za) any other matter which has to be or, may be, prescribed under this Act.

(3) The Central Government may, by notification, make rules to provide for all or any of the following matters, namely:—

(a) the functions of a National Commission under clause (c) of sub-section (1) of section 11;

(b) the terms and conditions of service of the Presiding Officer of a National Commission under sub-section (2) of section 13.

(4) The State Government may, by notification, make rules to provide for all or any of the following matters, namely:—

(a) the form in which the general statement of assets and liabilities of a trade union is to be delivered to the Registrar and the particulars which such statement shall contain, under sub-section (3) of section 19;

(b) the manner of audit of the accounts of trade union, under clause (j) of section 22;

(c) the form in which the register referred to in sub-section (2) of section 23 is to be maintained;

(d) the form in which a certificate of registration of a trade union is to be issued, under sub-section (1) of section 24;

(e) the form of the application for the cancellation of the certificate of registration of a trade union and the manner in which the facts stated in such application may be verified, under clause (a) of sub-section (1) of section 26; the period within which the annual return referred to in clause (b) of that sub-section is to be submitted and the period within which the defects in such annual return may be rectified under clause (c) thereof; the date before which the annual elections to elect the office-bearers of a trade union shall be held, under clause (h) of sub-section (1) of that section;

(f) the manner in which and the time within which a person aggrieved by the refusal of the Registrar to register a trade union, or by the cancellation of a certificate of registration, may appeal to the Tribunal, under sub-section (1) of section 27;

(g) the authorities to which notice of any change in the address of the registered office of a trade union is to be given under sub-section (2) of section 29;

(h) the manner in which the membership fee deducted by the employer from the wages of the employees is to be paid over by

such employer to the trade union concerned, under sub-section (2) of section 30;

(i) the date on or before which an office-bearer of a trade union is to file a statement of his assets and liabilities every year, under section 35;

(j) the manner in which the Registrar shall, on the dissolution of a trade union, divide its funds among its members in the circumstances referred to in sub-section (2) of section 40;

(k) the manner in which the general statement of receipts and expenditure of a trade union is to be audited, the date on or before which such general statement is to be forwarded to the Registrar, the form in which such statement shall be prepared and the particulars which it shall contain, under sub-section (1) of section 41;

(l) the manner in which, and the time within which, an application is to be made to the Tribunal for the adjudication of a dispute referred to in sub-section (1) of section 43; and the manner in which the Tribunal or National Commission may enquire into such dispute under sub-section (4) of section 43.

(5) All rules made under this section shall be subject to the condition of previous publication.

160. (1) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

Laying
of rules
before
State
Legis-
lature
and
Houses
of Par-
liament.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

16 of 1926.
20 of 1946.
14 of 1947.

161. (1) The Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947, are hereby repealed.

Repeal
and
saving.

(2) Notwithstanding the repeal of the Acts referred to in sub-section (1),—

16 of 1926.

(a) where no appeal has been preferred before the commencement of this Act under section 11 of the Trade Unions Act, 1926, from any order of the Registrar registering or cancelling the registration of a trade union and the period for preferring such appeal has not expired at such commencement, the aggrieved person may prefer an appeal to the Industrial Tribunal within ninety days from the commencement of this Act, as if such order were an order made by a Registrar under this Act;

(b) any appeal preferred to a High Court or to any other Court under section 11 of the Trade Unions Act, 1926, and pending at the commencement of this Act shall be disposed of by the High Court or other Court, as the case may be, as if it were an appeal preferred under section 27 of this Act to a Tribunal;

16 of 1926.

(c) all Standing Orders in force in any industrial establishment or undertaking shall, in so far as they relate to any matter specified in sub-section (1) of section 73 and are not inconsistent with the provisions of this Act, continue to be in force in that industrial establishment or undertaking until Standing Orders to provide for that matter are made by the Central Government under sub-section (1) of section 73;

(d) every Labour Court and Industrial Tribunal constituted by the appropriate Government under the Industrial Disputes Act, 1947 (hereafter in this section referred to as the Industrial Disputes Act) and functioning at the commencement of this Act shall be deemed to be a Labour Court and Tribunal respectively established by the respective appropriate Government under this Act (such Labour Court or Tribunal hereinafter being referred to as the corresponding Labour Court or corresponding Tribunal, as the case may be) and every National Industrial Tribunal constituted by the Central Government for the adjudication of any industrial dispute as defined in the Industrial Disputes Act shall be deemed to be a National Commission constituted by the Central Government for the adjudication of such dispute (such National Commission hereinafter being referred to as the corresponding National Commission);

14 of 1947.

(e) every person appointed before the commencement of this Act, as a Presiding Officer of a Labour Court, Industrial Tribunal or National Industrial Tribunal constituted under the Industrial Disputes Act, and holding office as such immediately before such commencement shall, on and from such commencement, be deemed to have been appointed as Presiding Officer of a Labour Court, Tribunal or National Commission, as the case may be, established or constituted under this Act, and shall hold such office with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if this Act had not been enacted and shall continue to do so unless and until the employment of such person is duly terminated or until his remuneration and other conditions of service are duly altered by the appropriate Government, in the case of the Presiding Officer of a Labour Court or Tribunal, or by the Central Government, in the case of a National Commission;

(f) any reference for arbitration made by the employers and employees of any matter which is an individual dispute, industrial dispute or trade union dispute as defined in this Act and pending at the commencement of this Act shall be deemed to be a reference for arbitration of such matter made under this Act and shall be dealt with accordingly;

(g) any settlement arrived at in pursuance of negotiations between employers and employees or in pursuance of conciliation by a Conciliation Officer under the Industrial Disputes Act, or any award made by a Labour Court, Industrial Tribunal or National Industrial Tribunal under that Act, before the commencement of this

Act and subsisting at such commencement may be executed as if it were a settlement arrived at in pursuance of negotiation under section 97 or conciliation under section 98 or an award made by a Labour Court, Tribunal or National Commission under the provisions of this Act;

(h) any proceeding pending before a Labour Court, Industrial Tribunal or National Industrial Tribunal constituted under the Industrial Disputes Act, at the commencement of this Act shall stand transferred to, and be continued from the stage at which such proceedings are pending, by—

(a) where such proceedings are pending before a Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, the corresponding Labour Court or Industrial Tribunal; and

(b) where such proceeding are pending before a National Industrial Tribunal constituted under the Industrial Disputes Act, the corresponding National Commission:

Provided that no application for the execution of such settlement or award shall be made after the expiry of ninety days from the commencement of this Act;

(i) any reference of an industrial dispute for adjudication made to a Labour Court, Industrial Tribunal or National Industrial Tribunal under the Industrial Disputes Act, shall be deemed—

(A) where such reference is for the adjudication of an industrial dispute referred to in section 2A of the aforesaid Act, to be an application for adjudication of an individual dispute made under section 103 of this Act; and

(B) where such reference is for the adjudication of any other industrial dispute, under the Act aforesaid, to be a reference for adjudication of an industrial dispute under section 104 of this Act,

and shall be dealt with accordingly; and

(j) any application for permission made under sub-section (1) of section 25M or notice given under sub-section (1) of section 25N or under sub-section (1) of section 25O of the Industrial Disputes Act, shall be deemed to be an application made or notice given under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 and section 24 of the General Clauses Act, 1897, with regard to the effect of repeal and the effect of repeal and re-enactment.

10 of 1897.

14 of 1947.

162. Where before the commencement of this Act, any industrial dispute concerning any industry as defined in the Industrial Disputes Act, 1947, has been referred for adjudication under that Act, to a Labour Court, Industrial Tribunal or National Industrial Tribunal constituted under that Act, but the provisions of this Act do not apply

Provision
regarding
pending
proceed-
ings for
adjudi-

cation of industrial disputes to which this Act does not apply.

to such industry, then, if such adjudication proceedings are pending at the commencement of this Act—

(a) where such proceedings are pending before a Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947, the corresponding Labour Court or corresponding Tribunal; and

14 of 1947.

(b) where such proceedings are pending before a National Industrial Tribunal constituted under the Industrial Disputes Act, 1947, the corresponding National Commission,

14 of 1947.

shall proceed with the adjudication of such dispute in accordance with the provisions of this Act as if this Act applied to such industry and the award made in such adjudication proceedings shall, for all the purposes of this Act, be deemed to be an award made by a Labour Court, Industrial Tribunal or National Commission, as the case may be, established or constituted under this Act in an industrial dispute referred to it for adjudication.

Transitional provision.

163. Without prejudice to the provisions contained in section 161, where any provision of this Act is brought into force in any State before the commencement of that section, the corresponding provision, if any, in the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, or the Industrial Disputes Act, 1947, shall stand repealed and the provisions of sub-section (2) and sub-section (3) of section 161 shall, so far as may be, apply to such repeal.

16 of 1926.

20 of 1946

14 of 1947.

Repeal of State laws and savings.

164. (1) If on the commencement of any provision of this Act in any State, there is any corresponding provision in any State Act in force in that State, such provision shall stand repealed.

(2) Where any provision of any State Act stands repealed under sub-section (1), the provisions of sub-section (2) of section 161 shall, so far as may be, apply to such repeal in the same manner as they apply in relation to the repeal of the Acts mentioned in sub-section (1) of that section (hereafter in this section referred to as Central Acts):

Provided that any reference in sub-section (1) of section 161 to any provision of any of the Central Acts or any officer, authority, tribunal or court appointed or constituted by or under any of the Central Acts shall be deemed to be reference to the corresponding provision of, or corresponding officer, authority, tribunal or court appointed or constituted by or under, the corresponding State Act so repealed:

Provided further that if any question arises as to who or which such corresponding officer, authority, tribunal or court is, the decision of the Central Government thereon shall be final.

(3) The provision for particular matters made by sub-section (2), read with sub-section (2) of section 161, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal.

10 of 1897.

Overriding effect of the Act.

165. Save as otherwise provided herein, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

166. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

Power to
remove
difficulties.

(2) No order under sub-section (1) shall be made after the expiration of a period of two years from the commencement of this Act.

167. In section 6 of the Sales Promotion Employees (Conditions of Service) Act, 1976, sub-section (2) shall be omitted.

Amend-
ment of
Act 11 of
1976.

THE FIRST SCHEDULE

[See section 2(13)]

ESSENTIAL SERVICES

1. Any establishment of, or connected with, the armed forces of the Union or other establishments or installations connected with the defence of the country against war or external aggression.

2. Any railway service, or any other transport service for the carriage of passengers or goods by air, water or land.

3. Any service in the International Airport Authority of India constituted under section 3 of the International Airports Authority Act, 1971.

4. Any service in, or in connection with the working of, any major port or dock.

5. Any section of an industrial establishment or undertaking on the working of which the safety of such establishment or undertaking or the employees employed therein depends.

6. Any postal, telegraph or telephone service.

7. Any service in, or in connection with, the working of any public sector undertaking engaged in the purchase, procurement, storage, supply or distribution of foodgrains.

8. Any industry which generates, supplies or distributes power, light or water to the public, whether directly or indirectly.

9. Any system of public conservancy or sanitation.

10. Banking.

11. All atomic energy installations including nuclear power stations.

12. Production, supply and distribution of coal.

THE SECOND SCHEDULE

[See section 9(5)]

MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

1. The propriety or legality of an order passed by an employer under the Standing Orders.

2. The application and interpretation of Standing Orders.

3. Discharge or dismissal or termination otherwise of services (not being retrenchment) of employees including reinstatement of, or grant of relief to, employees wrongfully dismissed.

4. Withdrawal of any customary concession or privilege.

5. Illegality or otherwise of a strike or lock-out.

6. Computation of dues payable to employees.

7. All other matters other than those specified in or under the **Third Schedule**.

THE THIRD SCHEDULE

[See section 10(5) (a)]

MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

1. Wages, including the period and mode of payment.

2. Compensatory and other allowances.

3. Hours of work and rest intervals.

4. Leave with wages and holidays.

5. Bonus, profit sharing, provident fund and gratuity.

6. Shift working otherwise than in accordance with the **Standing Orders**.

7. Classification by grades.

8. Rules of discipline.

9. Rationalisation.

10. Retrenchment of employees and closure of an industrial establishment or undertaking.

11. Any other matter which may be prescribed.

THE FOURTH SCHEDULE

[See section 2(39)]

UNFAIR PRACTICES

I. On the part of employers and trade unions of employers

(1) To interfere with, restrain from, or coerce in the matter of, the exercise by employees of their rights to organise, form, join or assist a trade union of employees or to engage in concerted activities for the purpose of mutual aid or protection, that is to say—

(a) threatening employees with discharge or dismissal, if they join a trade union of employees;

(b) threatening a lock-out or closure, if a trade union of employees is organised; or

(c) granting wage increase at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

(2) To dominate, interfere with the working of, or contribute support (financial or otherwise) to any trade union of employees, that is to say,—

(a) an employer taking an active interest in organising a trade union of his employees; or

(b) an employer showing partiality or granting favour to one of several trade unions of employees attempting to organise or to its members.

Explanation.—This provision shall not apply to recognition by employer of the rights of any registered trade union of employees conferred by this Act or provision by employer to such registered trade union of employees facilities which he is bound to provide for under this Act.

(3) To establish employer-sponsored trade unions of employees.

(4) To encourage or discourage membership in any trade union of employees by discriminating against any employee, that is to say,—

(a) discharging or punishing an employee because he urged other employees to join or organise a trade union of employees;

(b) refusing to reinstate an employee because he took part in a lawful strike;

(c) changing seniority rating of employees because of his trade union activities;

(d) refusing to promote an employee to higher posts on account of his trade union activities; or placing restrictions on promotions and training in respect of any employee because of his trade union activities;

(e) giving unmerited promotions to any employee with a view to creating discord amongst other employees or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of trade unions of employees or transferring them from one place to another on account of their trade union activities;

(g) allocation of unfair task to certain employees including assignment to the lower grade employees duties of higher grades of employees, or entrustment of the most strenuous jobs to particular employees, on account of their trade union activities; or

(h) payment of extra bonus or other financial incentives to non-unionised employees as an incentive to becoming members of any particular trade union.

(5) To discharge or discriminate against any employee for filing charges or testifying against an employer in any inquiry or proceedings relating to any individual dispute or industrial dispute.

(6) To refuse to bargain collectively in good faith with the registered trade union of employees certified as negotiating agent, or local union in accordance with the provisions of this Act and to interfere with the right of employees to bargain collectively.

(7) To coerce employees, through administrative measures, with a view to securing their agreement to voluntary retirement.

(8) To discharge or dismiss or transfer employees—

(a) not in good faith but in the colourable exercise of the employer's rights;

(b) by falsely implicating them in a criminal case;

(c) for patently false reasons;

(d) on untrue or trumped up allegations of absence without leave;

(e) in utter disregard of the principles of natural justice in the conduct of domestic inquiry or with undue haste;

(f) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct, thereby leading to disproportionate punishment; or

(g) to avoid payment of statutory dues.

(9) To abolish the work which is being done by the employees and to give such work to contractors as a measure for breaking a strike or weakening a trade union of employees or generally terrorising the employees.

(10) To insist upon individual employees who were on legal strike, to sign a good conduct bond as a pre-condition to allowing them to resume work.

(11) To show favouritism or partiality to one set of employees on the ground of caste, religion, language, trade union affiliation or on any other ground regardless of merit.

(12) To employ workmen as "badlis", casual or temporary and to continue them as such indefinitely, with the object of depriving them of the status and privileges of permanent workers.

(13) To violate established procedures of personnel management regarding appointment, confirmation, transfer, promotion, wages, incentive earnings, redress of grievances and other related matters.

(14) To violate, or refuse to implement properly, any award or settlement.

(15) To discontinue any customary privileges.

(16) To delay in making payment of, or fail or refuse to pay, sums payable by employer as his contribution, or the employees' contribution deducted by such employer from the wages of his employees, under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, towards the provident fund or Deposit-linked Insurance Fund established under that Act.

(17) To introduce labour saving techniques or machines without prior consultation with the negotiating agent and without planning for the alternative employment of the employees, thereby rendered surplus, either within or outside the industrial establishment or undertaking concerned.

(18) To declare a lock-out, for the purpose of pre-empting any fair or legitimate trade union activity or for coercing the employees or their unions to accept unfavourable terms of employment, including service conditions, work environment, or for curtailing production.

II. On the part of employees and trade unions of employees

(1) To coerce employees in the exercise of their right to self-organisation or to join a trade union of employees of their choice or refrain from joining any trade union of employees.

(2) For the striking members of a trade union of employees to picket non-striking employees in such a manner that such non-striking employees are physically debarred from entering the work place.

(3) To indulge in acts of force or violence or to hold out threats of intimidation, in connection with a strike against non-striking employees or against the managerial staff or with the intention of compelling the employer to do or omit to do any particular thing.

(4) To refuse to negotiate collectively in good faith with the employer and dishonour an agreement entered into in the course of negotiations under section 97 or conciliation under section 98.

(5) To indulge in coercive activities with the intention of preventing the certification of a registered trade union of employees as sole negotiating agent or chief negotiating agent or the constitution of a negotiating committee.

(6) To encourage or instigate or engage in slowing down production (whether it is called "work to rule" or by any other name) to compel the employer to accept the demands of the employees or any section thereof.

(7) To stage demonstrations at the residence of the employers or the managerial staff.

(8) To refuse to work overtime when exigencies of service require performance of overtime work.

STATEMENT OF OBJECTS AND REASONS

The three Central enactments which, at present, regulate matters relating to industrial relations are the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947. Besides, there are State Laws on these matters in some States to supplement the Central Laws. A voluntary Code of Discipline has also been in existence since 1958. It provides for the setting up of a grievance procedure for the redress of individual grievances, and lays down a set of criteria for the recognition of unions. The National Commission on Labour (1969) which studied the industrial relations practices and procedures found a number of shortcomings which had impeded the growth of industrial harmony. It came to the conclusion that it was essential to create a climate conducive to industrial harmony and foster proper attitudes, in the minds of employers as well as employees, so that cooperative endeavour might promote rapid economic progress. The Commission made useful recommendations concerning the scope and coverage of the laws, procedure and machinery for speedy settlement of disputes and registration and recognition of unions. Later, a 30-Member Tripartite Committee on Comprehensive Industrial Relations Law and Composition of the Indian Labour Conference set up by the Central Government in pursuance of a recommendation of the Tripartite Labour Conference (May 1977) studied the existing laws and made recommendations regarding the broad framework of a comprehensive law on industrial relations. The Committee's report indicated that there was a large measure of agreement on some of the basic aspects relating to the industrial relations law but there were divergent views on some details.

2. In the light of the experience gained, the views expressed by all the interests concerned and the growing expectations of the working class, it is considered necessary to have a comprehensive Industrial Relations Law which would integrate the three Central enactments, incorporate some of the more important provisions of the State enactments and the Code of Discipline and bring about certain improvements to meet the needs of changing socio-economic conditions.

3. The objective of the new law is to delineate a legal framework that will promote cordiality and peace in industrial establishments, protect the legitimate rights of employees and the legitimate interests of industries, so that industrial harmony and cooperation may lead to increased production and productivity, increased flow of goods and services and consequent improvement in the standards of living of the people and a greater measure of social justice.

4. The expression "industry" has been widely interpreted by the Supreme Court recently. Having regard to the nature of the work performed in hospitals, the need to maintain in educational and training institutions and in scientific and research organisations an atmosphere different from that in industrial and commercial undertakings, and to meet the special needs of organisations engaged in charitable, social and

philanthropic services, such institutions and organisations are being excluded from the provisions of the Bill. It is proposed to have a separate law to protect employees of such institutions and organisations from arbitrary action and to provide procedures and machinery for the redress of their individual and collective grievances. All these have been taken note of and the term "industry" in the Bill has been made more specific even while making the coverage wider. The scope of the term "employee" has also been enlarged to cover the supervisory staff whose wages do not exceed Rs. 1,000 per month as well as those employed in sales promotion, professional or recreational work.

5. Multiplicity of trade unions has often led to difficulty in identifying the negotiating agent. This has sometimes resulted in competitive demands and irresponsible industrial action. The Bill, therefore, seeks to provide for conditions which are conducive to the growth of a healthy and responsible trade union movement. The existing minimum conditions for registration are being changed in the light of the growth that the trade union movement has registered in the last few decades. It is sought to encourage leadership from within the trade unions. The procedure for registration of unions and other connected matters are being streamlined. A procedure is being laid down for the speedy resolution of trade union disputes. The Bill also provides that employers and employees and the trade unions of employers and employees should adhere to fair practices.

6. One of the crucial issues confronting the industrial relations scene is the question of identifying a negotiating unit on which there is at present no Central Law. The Bill provides for the determination of a negotiating unit by the appropriate Government. Industrial Tribunals will determine through the process of verification of membership of the unions or by secret ballot the "negotiating agent", the "associate union" and the "local union". It will be for the appropriate Government to decide *inter alia* in the light of the state of unionisation in the industry and certain other matters, whether such determination will be done through a secret ballot or through verification of membership. According to the scheme of certification, a registered trade union can be certified as a sole negotiating agent if it has the support of 65 per cent. or more of the employees of an establishment or as chief negotiating agent if it has the support of less than 65 per cent. but not less than 50 per cent. of the employees. In the latter case, other registered trade unions with the support of at least 20 per cent. of the employees will function as associate unions. Where there is no trade union or none qualifies as a negotiating agent a negotiating committee would be formed by election through secret ballot to function as the sole negotiating agent. In a local unit of an establishment where there is an industry-wise negotiating agent, a registered trade union with the maximum support but not less than 40 per cent. of the employees of that unit can be certified as a local union. A negotiating agent would hold office for two years and be competent to negotiate with the management and enter into binding settlements. The Bill provides for the rights and privileges of a negotiating agent, associate unions and local unions. It also provides additional protection to the office-bearers of such unions against anti-union practices. These measures would provide the much-needed stability in the employer-employee relationship in industrial establishments.

7. The Bill, for the first time, makes a specific provision for bipartite negotiations as the first step for settling industrial disputes. This is intended to promote mutual understanding and goodwill. The Bill also lays stress on the need to exhaust all modes of settlement like negotiation, conciliation, arbitration, etc., before either party decides to resort to direct action. These procedures would be time-bound. A distinction will be made between establishments or undertakings that cater to essential services and others. In the former, there would be compulsory reference of disputes for adjudication, or arbitration failing bipartite negotiations and conciliation; in these cases there would, therefore, be no need for any work-stoppage either in the form of a strike or lock-out; and all sections of society will be assured of continued availability of these essential services. In non-essential services, where disputes cannot be settled by any other means and the employees want to resort to strike, it would be necessary for a negotiating agent to conduct a strike ballot and obtain the support of 60 per cent. of the employees before a strike is resorted to. It would also be required to give 14 days' notice before going on strike. In the case of a lock-out, it would be necessary for the employer to give 14 days' notice after recording the approval of the highest authority in the establishment to such notice.

8. Disputes are classified in the Bill into three categories, namely, individual, industrial and trade union disputes. In so far as individual disputes are concerned, the law would provide for a statutory grievance procedure within an establishment and every employee with a grievance can have recourse to it. If the aggrieved employee is not satisfied with the decision of the grievance settlement authority he would be entitled to approach a Labour Court direct to have his case judicially determined. In industrial disputes, the reference would be made by the appropriate Government. In the case of trade union disputes the matter can be taken to a Tribunal by any member of a trade union or a trade union or the appropriate Government. If the appropriate Government is satisfied that there is a Joint Consultative Machinery, Tribunal or other body already functioning in any industrial establishment or undertaking to the benefit of the employees, that Government may, by notification in the Official Gazette, direct that the provisions of Chapters IV, IX and XII shall apply in relation to that establishment or undertaking with the modifications specified in the notification.

9. Industrial judiciary would consist of Labour Courts, Industrial Tribunals and National Industrial Relations Commission. These bodies would have their functions clearly defined. The National Industrial Relations Commission, besides adjudicating such disputes as are at present adjudicated by the National Tribunals, will also advise the Central Government on such matters as may be referred to it. The Labour Courts, Tribunals, etc., would also be required to give their decision within certain stipulated time limits. The Bill seeks to confer on these authorities power to issue interim order of stay and injunction, to grant relief during the pendency of proceedings and to execute their awards and orders.

10. Under the Bill, employees in establishments employing 20 or more employees and affected by lay-off would be entitled to 50 per cent. of their wages for the first month of lay-off and 75 per cent. for subsequent

months. In respect of lay-off, retrenchment and closure the employment limit of an establishment for the purpose of prior permission would be 100 instead of 300, as at present. There would be exemptions from this requirement in certain cases.

11. Change in conditions of service sometimes becomes a major irritant in the labour-management relations. At present the law requires in certain cases a notice to be given before the employers can effect any changes. The Bill provides that as a rule, all changes in the conditions of service, except in respect of specified matters can be brought about only with the consent of the employees likely to be affected by the changes. The law would also empower the appropriate Government to specify, as an interim measure a set of conditions of service and relief for any class of employees in any collective disputes.

12. With a view to simplifying procedures, the Bill provides for the making of uniform Standing Orders on certain specified matters by notification by the Central Government. Parties would be free to supplement them by bipartite settlements. A statutory provision is also being made for the payment of subsistence allowance to employees under suspension, pending domestic enquiry.

13. A serious draw-back of the existing enactments is that the provisions contained in them particularly for the enforcement of settlements and awards, for checking illegal strikes and lock-outs, etc., have not been effective and persons entitled to relief find it difficult to enforce their right. To make the law effective, the Bill seeks to make the penal provisions in the law more stringent.

14. With the enactment of the Industrial Relations Bill, the three Central Laws would be repealed. Under the transitional provisions, provision has been made to enable the bringing into force of the legislation in different States on different dates. A State Law would cease to be in force on the enforcement of the provisions of this legislation in that State.

NEW DELHI;

RAVINDRA VARMA.

The 16th August, 1978.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill empowers the Central Government to appoint a Chief Labour Commissioner and sub-clause (2) of that clause empowers that Government to appoint Joint Chief Labour Commissioners, Deputy Chief Labour Commissioners, Regional Labour Commissioners, Assistant Labour Commissioners and such other officers as it may consider necessary to assist the Chief Labour Commissioner in the discharge of his duties.

2. Under sub-clause (1) of clause 4, the Central Government may appoint such number of Conciliation Officers as it thinks fit charged with the duty of mediating in and promoting the settlement of industrial disputes.

3. Under sub-clause (1) of clause 8, the Central Government may constitute Courts of Inquiry for inquiring into any matter connected or appearing to be connected with or relevant to an industrial dispute or trade union dispute.

4. Under sub-clause (1) of clause 9 of the Bill, the Central Government is empowered to establish such number of Labour Courts as it thinks fit and under sub-clause (3) of that clause, the Central Government is to appoint the Presiding Officers of such Labour Courts. Similarly, under sub-clause (1) of clause 10, the Central Government is empowered to establish Industrial Tribunals and under sub-clause (3) of that clause, the Central Government is to appoint Presiding Officers of such Industrial Tribunals.

5. Clause 11 of the Bill empowers the Central Government to constitute National Industrial Relations Commissions.

6. There are at present a Chief Labour Commissioner, a Joint Chief Labour Commissioner, Deputy Chief Labour Commissioners, Regional Labour Commissioners, Assistant Labour Commissioners, Conciliation Officers and Labour Courts-cum-Industrial Tribunals. But if the Bill is enacted and brought into force, a few more such officers may have to be appointed for its effective implementation. Similarly for more expeditious adjudication of disputes, within the time limits provided therefor in the Bill, the number of Labour Courts and Industrial Tribunals may have to be increased. Additional staff to assist the aforementioned officers and Labour Courts and Industrial Tribunals also would have to be provided.

7. It is difficult to make an accurate assessment at this stage of the number of additional officers of the categories aforementioned or additional staff that will have to be appointed, or the additional number of Labour Courts and Tribunals that may be needed, for the effective enforcement of the proposed legislation. Courts of Inquiry and National Industrial Relations Commissions are to be appointed as and when the need arises. It is, however, estimated that the annual recurring expenditure if the Bill is enacted and brought into operation is likely to be Rs. 13 lakhs. The non-recurring expenditure is likely to be Rs. 7 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 148(3) of the Bill empowers the appropriate Government, by notification in the Official Gazette, to direct that the provisions of clause 77 of the Bill shall not apply or shall apply subject to such modifications, as may be specified in the notification, to any class of industrial establishments or undertakings or any class of employees employed in any industrial establishment or undertaking where the appropriate Government is of the opinion that the application of the provisions of clause 77 to such class of industrial establishments or undertakings or such class of employees is likely to affect prejudicially the employers in relation thereto and that the public interest so requires.

2. Clause 149 of the Bill empowers the appropriate Government to direct, by notification in the Official Gazette, that the provisions of Chapter IV, Chapter IX and Chapter XII shall apply in relation to any industrial establishment or undertaking with such modifications as may be specified in such notification, where in such industrial establishment or undertaking any joint consultative machinery consisting of representatives of employees and employers or any other body has been set up for the purpose of settling individual disputes or industrial disputes and the appropriate Government is satisfied that the functioning of such joint consultative machinery or other body has been beneficial to the employees employed in such industrial establishment or undertaking.

3. Sub-clause (1) of clause 157 empowers the appropriate Government to include in the First Schedule any industry not specified therein, where the appropriate Government is satisfied that public interest requires that such industry, which is essential to the life of the community, should be declared as an essential service.

4. Sub-clause (2) of clause 157 of the Bill empowers the Central Government to omit, by notification in the Official Gazette, any industry from the First Schedule.

5. Sub-clause (3) of clause 157 of the Bill empowers the Central Government, to add to or alter or amend, by notification in the Official Gazette, the Second Schedule, the Third Schedule or the Fourth Schedule.

6. Sub-clause (1) of clause 159 empowers the appropriate Government to make rules for the purpose of giving effect to the provisions of the Bill. Sub-clause (2) of the clause enumerates the matters in regard to which rules may be made. The matters in regard to which such rules may be made relate, *inter alia*, to—

(i) the terms and conditions of service of the presiding officer of a Labour Court or Tribunal;

(ii) the manner of notifying by the Tribunal of its intention to determine the support of a registered trade union of employees

or election to choose the chairman or other members of a negotiating committee;

(iii) the form in which an application by a registered trade union of employees for certification as sole negotiating agent, chief negotiating agent, associate union or local union shall be made, the particulars which such application shall contain and the fees which shall accompany such application;

(iv) the procedure in enquiring into an application by a registered trade union of employees for certification as negotiating agent or local union;

(v) subject to the provisions of the Bill, the manner of the election of the chairman and other members of a negotiating committee, the persons qualified to stand for election, the disqualifications for being chosen as and for being such chairman or other member, the manner of settlement of disputes relating to the election and the filling up of casual vacancies in the negotiating committee;

(vi) the constitution and procedure of grievance settlement authority;

(vii) the manner in which any dispute pertaining to a strike ballot shall be decided by the Registrar;

(viii) the manner in which any award, determination or decision of a Labour Court, Tribunal or National Commission is to be executed.

7. Sub-clause (3) of clause 159 empowers the Central Government to make rules to provide for the functions of a National Commission under sub-clause (1) (c) of clause 11 and the terms and conditions of service of the Presiding Officer of a National Commission.

8. Sub-clause (4) of clause 159 empowers the State Government to make rules to provide for the various matters enumerated in that sub-clause. The matters in regard to which such rules may be made relate, *inter alia*, to—

(i) the form in which the general statement of assets and liabilities of a trade union is to be delivered to the Registrar and the particulars which such statement shall contain;

(ii) the manner of audit of the accounts of a trade union;

(iii) the manner in which and the time within which a person aggrieved by the refusal of the Registrar to register a trade union or by the cancellation of a certificate of registration, may appeal to the Tribunal;

(iv) the manner in which the membership fee deducted by the employer from the wages of the employees is to be paid over by such employer to the trade union concerned;

(v) the date on or before which an office-bearer of a trade union is to file a statement of his assets and liabilities every year.

9. The rules which the appropriate Government, Central Government or State Government are empowered to make under clause 159

are to be made by notification in the Official Gazette and the power to make such rules is subject to the condition of previous publication. Every notification issued by a State Government under clause 157, amending the Schedules, and every rule made by that Government under clause 159 are to be laid before the State Legislature and every notification issued by the Central Government under clause 157 and every rule made by the Central Government under clause 159 are to be laid before the Parliament.

10. The delegation of legislative power under the aforementioned provisions relates to matters of procedure or administrative detail or to matters in respect of which it is not practicable to make detailed provisions. Hence, the delegation of legislative power is of a normal character.

BILL No. 141 OF 1978

A Bill to consolidate and amend the law relating to the conditions of service of employees employed in hospitals and educational institutions with a view to securing the welfare of such employees, and for the investigation and settlement of disputes between such employees and their employers, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent,
com-
mence-
ment and
applica-
tion.

1. (1) This Act may be called the Hospitals and Educational Institutions (Conditions of Service of Employees and Settlement of Employment Disputes) Act, 1978.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It shall apply to—

(a) every hospital; and

(b) every educational institution,

in which twenty or more persons are employed or were employed on any day of the preceding twelve months:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the

Official Gazette, apply the provisions of this Act to any hospital or educational institution employing such number of persons less than twenty as may be specified in the notification.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(1) "appropriate Government" means,—

(a) in relation to any establishment under the control of the Central Government or a railway administration, or having branches or units or offices in more than one State, the Central Government; and

(b) in relation to any other establishment, the State Government;

(2) "educational institution" includes—

(a) any University;

(b) any college, whether or not affiliated to a University;

(c) any school, whether or not recognised or aided by Government;

(d) any scientific institution;

(e) any institution in which research in respect of any matter is carried on;

(f) any other institution in which the activity of imparting knowledge or training is systematically carried on;

(3) "employee" means any person (including an apprentice) employed in any establishment for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to any employment dispute relating to the termination of employment (whether by way of punishment or otherwise) of an employee, includes any person whose employment has been so terminated, but does not include any such person—

45 of 1950.
46 of 1950.
62 of 1957.

(a) who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957; or

23 of 1957.

47 of 1968.

50 of 1968.

(b) who is employed in the police service or is an officer or other employee of a prison, or is an officer or a member of the Railway Protection Force constituted under section 3 of the Railway Protection Force Act, 1957, or the Border Security Force constituted under section 4 of the Border Security Force Act, 1968, or the Central Industrial Security Force constituted under section 3 of the Central Industrial Security Force Act, 1968; or

(c) who is employed mainly in a managerial or administrative capacity; or

(d) who draws wages exceeding one thousand rupees per mensem;

(4) "employer" means,—

(a) in relation to an establishment under the control of any department of the Central Government or a State Government, the authority prescribed in this behalf or, where no authority is prescribed, the head of the department;

(b) in relation to an establishment under the control of a local authority, the chief executive officer of that authority;

(5) "employment dispute" means any dispute or difference between any employee and his employer in respect of any matter referred to in Schedule I and includes any dispute or difference between any employee and his employer in respect of any matter provided for in any regulation made under section 9 or section 10, as the case may be, or the interpretation of any such regulation;

(6) "establishment" means any hospital or educational institution to which this Act applies;

(7) "hospital" includes a nursing home, a dispensary or other institution for the treatment or for the reception and treatment of persons requiring medical attention or rehabilitation;

(8) "individual employment dispute" means any dispute or difference between any employee and his employer in respect of any matter referred to in Schedule II;

(9) "prescribed" means prescribed by rules made under this Act;

(10) "regulations" means regulations made under this Act;

(11) "rules" means rules made under this Act;

(12) "University" means a University as defined in clause (f) of section 2 of the University Grants Commission Act, 1956, and includes— 3 of 1956.

(a) any institution of higher education, other than a University, declared by the Central Government, under section 3 of the University Grants Commission Act, 1956, as an institution deemed to be a University for the purposes of that Act; and 3 of 1956.

(b) any other institution which under any Central Act or State Act is empowered to hold examinations and grant degrees, diplomas or certificates;

(13) all other words and expressions used but not defined in this Act and defined in the Industrial Relations Act, 1978, shall have the meanings respectively assigned to them in that Act.

CHAPTER II

AUTHORITIES UNDER THE ACT

Grievance
Settle-
ment Com-
mittee.

3. (1) Every employer in relation to any establishment shall, within a period of six months from the date on which this Act becomes applicable to such establishment, establish a Committee to be called the Grievance Settlement Committee for such establishment.

(2) The Grievance Settlement Committee shall consist of not less than four and not more than eight members representing both the employer and the employees:

Provided that the number of members representing the employees shall be equal to the number of members representing the employer.

(3) The members of the Grievance Settlement Committee representing the employer shall be nominated by the employer and the members of the Grievance Settlement Committee representing the employees shall, subject to the provisions of section 6, be chosen by the employees in such manner as may be prescribed.

(4) One of the members of the Grievance Settlement Committee representing the employer shall be nominated by the employer as the Chairman thereof.

(5) Subject to the regulations, the Grievance Settlement Committee shall have power to regulate its own procedure.

4. (1) Every employer in relation to any establishment shall, within a period of six months from the date on which this Act becomes applicable to such establishment, establish a Council to be called the Consultative Council for such establishment.

Consultative
Council
and Local
Consultative
Council.

(2) Notwithstanding anything contained in sub-section (1), where a person is the employer in relation to two or more establishments, wherein activities of the same nature are carried on, a Consultative Council may be established for all such establishments.

(3) Where—

(a) an employer establishes a Consultative Council for two or more establishments under sub-section (2); or

(b) an establishment has branches, units or offices situated in different places,

the employer shall establish a Council to be called the Local Consultative Council—

(i) in the case referred to in clause (a), for each of the two or more establishments for which the Consultative Council has been established; or

(ii) in the case referred to in clause (b), for each of the branches, units or offices situated in different places.

(4) The Consultative Council shall consist of not less than six and not more than twelve members representing both the employer and the employees.

(5) The Local Consultative Council shall consist of not less than four and not more than eight members representing both the employer and the employees.

(6) The number of members of the Consultative Council or Local Consultative Council, as the case may be, representing the employees shall be equal to the number of such members representing the employer.

(7) The members of the Consultative Council or Local Consultative Council, as the case may be, representing the employer shall be nominated by the employer and the members of the Consultative Council or Local Consultative Council, as the case may be, representing the employees shall, subject to the provisions of section 6, be chosen by the employees in such manner as may be prescribed.

(8) One of the members of the Consultative Council or Local Consultative Council, as the case may be, representing the employer shall be nominated by the employer as the Chairman of the Consultative Council or Local Consultative Council, as the case may be.

(9) Subject to the rules, the Consultative Council or the Local Consultative Council shall have power to regulate its own procedure.

Term of office of members of Grievance Settlement Committee, etc.

5. Subject to the rules, the term of office of the members of the Grievance Settlement Committee, Consultative Council and Local Consultative Council shall be such term, being not less than two years and not more than five years, as the employer may specify by regulations.

Right of recognised association of employees to nominate members of Grievance Settlement Committee, etc., representing employees.

6. (1) Where there is any association of employees, being an association which satisfies the condition laid down in sub-section (3), carrying on its activities for the benefit of the employees of any establishment and the employer in relation to that establishment, after ascertaining the support of the employees of such establishment for the association aforesaid in the prescribed manner, is satisfied that the association has the support of the majority of such employees, then, such employer shall recognise such association (hereinafter referred to as the recognised association) for the purposes of this section.

(2) Where there is any recognised association in relation to the employees of any establishment, the member or members, representing the employees, of the Grievance Settlement Committee, the Local Consultative Council and the Consultative Council, established for such establishment shall be nominated by such association.

(3) No office-bearer of any association referred to in sub-section (1) shall be a person who is not employed in any establishment.

Allowances payable to a member of Grievance Settlement Committee, etc., being employees' representative.

7. A member of the Grievance Settlement Committee, Consultative Council or Local Consultative Council, being employees' representative, shall be paid by the employer, in relation to any function discharged by him as such member, such travelling and other compensatory allowances as may be prescribed.

Roster of arbitrators.

8. The appropriate Government shall maintain a roster of arbitrators from which the parties to an employment dispute or individual employment dispute may choose an arbitrator or a body of arbitrators for settlement of such dispute.

Explanation.—Nothing in this section shall be construed as precluding the parties to such dispute from choosing an arbitrator or any or all the members of a body of arbitrators from among persons whose name or names is or are not included in such roster.

CHAPTER III

CONDITIONS OF SERVICE AND SETTLEMENT OF DISPUTES

Employer to make regulations in regard to certain matters.

9. (1) Every employer in relation to any establishment shall make regulations to provide for the following matters, namely:—

- (a) method of recruitment of, and qualifications for appointment as, employees;
- (b) eligibility and right for promotion of employees;
- (c) procedure for settlement of an individual employment dispute before an employee applies to the Grievance Settlement Committee for the settlement of such dispute;

(d) procedure to be followed by the Grievance Settlement Committee; and

(e) the term of office of the members of the Grievance Settlement Committee, Consultative Council and Local Consultative Council.

(2) Every regulation made under sub-section (1) (including any modification thereto) shall be—

(a) registered in the prescribed manner with such officer as the appropriate Government may, by notification in the Official Gazette, specify in this behalf (hereinafter referred to as the specified officer); and

(b) notified on the notice board of the establishment.

(3) The regulations referred to in sub-section (1) shall be made and submitted to the specified officer for registration under clause (a) of sub-section (2) by the employer in relation to an establishment within a period of six months from the date on which this Act becomes applicable to such establishment and every modification to such regulations shall be submitted by the employer to the specified officer for registration under that clause within a period of six months from the date on which such modification is made.

(4) The specified officer shall supply to any employee, on a request made therefor and on payment of such fees as may be prescribed, a certified copy of the regulations made by the employer for the establishment wherein such employee is employed.

10. Notwithstanding anything contained in section 9, the appropriate Government may, by notification in the Official Gazette, make model regulations in respect of any matter referred to in clause (c), clause (d) or clause (e) of sub-section (1) of that section and such regulations shall be in force in every establishment in the same manner as the regulations made by the employer in relation to such establishment until the regulations made by such employer in regard to that matter are registered with the specified officer under sub-section (2) of section 9.

Model
regula-
tions.

11. (1) Any employee, being a party to an individual employment dispute, may, if such dispute is not settled in accordance with the procedure laid down by the employer in the regulations apply to the Grievance Settlement Committee, established for the establishment wherein such employee is employed, for the settlement of the dispute.

Settle-
ment
of indivi-
dual em-
ployment
disputes.

(2) The Grievance Settlement Committee shall, after giving such employee and his employer a reasonable opportunity of being heard and after making such enquiry as it deems fit, pass such order in respect of such individual employment dispute as it deems to be just and proper and such order shall, subject to the other provisions of this section, be final.

(3) The Grievance Settlement Committee shall pass final order on an application made to it under sub-section (1) within a period of two months from the date on which such application is made.

(4) Where—

(a) the Grievance Settlement Committee fails to pass final order in respect of any individual employment dispute within the period specified therefor by sub-section (3), any party to the individual employment dispute; or

(b) any party to the individual employment dispute is aggrieved by the order of the Grievance Settlement Committee, such aggrieved party,

may, within such time as may be prescribed, refer such dispute for arbitration to an arbitrator nominated by both the parties to the dispute:

Provided that where the parties to such dispute fail to agree to nominate an arbitrator such dispute shall be referred to an arbitrator nominated by the appropriate Government on an application made to it in that behalf by one of the parties to such dispute.

(5) The award of an arbitrator in respect of any individual employment dispute referred to him shall be final.

Settle-
ment of
employ-
ment dis-
putes.

12. (1) Where any Local Consultative Council has been established for any establishment or branch, unit or office of any establishment, such employment disputes as are prescribed shall in the first instance be referred by the employee, any recognised association or employer to such Local Consultative Council.

(2) Any employee, recognised association or employer may refer any employment dispute, other than an employment dispute referred to in sub-section (1), to the Consultative Council established for any establishment.

(3) Where the Local Consultative Council fails to settle any employment dispute referred to it within such time as may be prescribed, it shall refer such dispute to the Consultative Council for settlement.

(4) Where any employment dispute is referred to a Local Consultative Council or Consultative Council, as the case may be, it shall make all efforts to promote a fair and amicable settlement of such dispute.

(5) The settlement referred to in sub-section (4) and arrived at between the parties to an employment dispute shall be recorded in the form of a memorandum and signed by the parties to the dispute or their authorised representatives and the members of the Local Consultative Council or Consultative Council, as the case may be.

(6) Where the Consultative Council fails to settle any employment dispute referred to it under sub-section (2) or sub-section (3) within a period of three months from the date on which such reference is made, it shall refer the dispute for arbitration to an arbitrator or body of arbitrators (not being a body of even number of arbitrators) agreed to by the parties to the dispute or, where the parties to such dispute fail to agree on the arbitrator or body of arbitrators, to a Board of Arbitrators constituted by the appropriate Government on a request made in that behalf by the Consultative Council.

(7) The Board of Arbitrators referred to in sub-section (6) shall consist of an independent person, who shall be the Chairman thereof and two members, one representing the employers in relation to the class of establishments of which the establishment to which the employment dispute relates is one and the other representing the employees employed in such establishments.

(8) The Board of Arbitrators may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

(9) Where the members of a body of arbitrators or a Board of Arbitrators are divided in their opinion, the decision of the majority shall be deemed to be the arbitration award for the purposes of this Act.

(10) The award of an arbitrator or a body of arbitrators or a Board of Arbitrators in respect of any employment dispute referred to him or it under sub-section (6) shall be final.

13. The remuneration payable to—

(a) any arbitrator or member of a body of arbitrators or a Board of Arbitrators for arbitrating any individual employment dispute or employment dispute referred to them for arbitration; or

(b) any assessor appointed under sub-section (8) of section 12,

shall be such as may be prescribed and shall be paid by such of the parties to the individual employment dispute or employment dispute, as the case may be, and in such proportion as the arbitrator or body of arbitrators or a Board of Arbitrators, as the case may be, shall determine.

14. Nothing in the Arbitration Act, 1940, shall apply to any arbitration under this Act.

Remuneration.
payable to
arbitrator.

Act 10 of
1940 not
to apply
to
arbitra-
tion
under
this Act.

5 of 1908.

15. Every arbitrator, body of arbitrators or a Board of Arbitrators shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

Power
to sum-
mon
witnesses
etc.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses; and

(d) any other matter which may be prescribed.

16. (1) Every order of the Grievance Settlement Committee or award of an arbitrator in an individual employment dispute or settlement arrived at between the parties to an employment dispute under section 12 or award of an arbitrator or a body of arbitrators or a Board of Arbitrators in an employment dispute shall come into operation on and from such date as may be specified therein, but where no such date is specified, it shall come into operation on the date of the order or award or settlement, as the case may be, and shall, subject to the provisions of sub-section (2), become enforceable on the date on which such order, award or settlement comes into operation.

Enforce-
ability of
awards
and
settle-
ments.

(2) Every award of an arbitrator or a body of arbitrators or a Board of Arbitrators in an employment dispute shall become enforceable on the expiry of thirty days from the date of its pronouncement:

Provided that in the case of an employment dispute to which the appropriate Government is a party, where that Government is of the opinion that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of such award, the appropriate Government may, by notification in the Official Gazette, declare that such award shall not become enforceable on the expiry of the said period of thirty days.

(3) Where any declaration has been made, under the proviso to sub-section (2), in relation to an award of an arbitrator or a body of arbitra-

tors or a Board of Arbitrators in an employment dispute, the appropriate Government may, within ninety days from the date of such award, by notification in the Official Gazette, make an order rejecting or modifying such award and shall on the first available opportunity, lay the award together with a copy of such order (where any such order has been made) before the Legislature of a State, if the order has been made by the State Government, or before Parliament, if the order has been made by the Central Government.

(4) Where any award referred to in sub-section (3) is rejected by the appropriate Government, it shall not be enforceable.

(5) Where any award referred to in sub-section (3) is modified by an order made under that sub-section, such award as so modified shall become enforceable on the expiry of fifteen days from the date on which the order making the modification is published in the Official Gazette.

(6) Where, in relation to any award referred to in sub-section (3), a declaration under the proviso to sub-section (2) has been made but no order is made under sub-section (3), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (3).

Persons
on whom
awards
are
binding.

17. (1) The order of a Grievance Settlement Committee, or of an arbitrator, in an individual employment dispute, shall be binding on—

(a) the parties to the individual employment dispute; and

(b) where the party referred to in clause (a) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

(2) The settlement referred to in sub-section (4) of section 12, or award of an arbitrator or a body of arbitrators or a Board of Arbitrators, in an employment dispute shall be binding on—

(a) the parties to the employment dispute;

(b) where the party referred to in clause (a) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; and

(c) on all persons who were employees of such establishment on the date on which the dispute was referred to the Local Consultative Council or, where the dispute was referred to the Consultative Council in the first instance, to the Consultative Council and all persons who subsequently became employees of such establishment.

Prohibi-
tion of
strike
and
lock-out.

18. (1) No employee employed in any establishment shall go on strike in breach of contract.

(2) No employer in relation to any establishment shall lock-out his employees.

CHAPTER IV

PENALTIES AND PROCEDURE

Penalties

19. (1) Any employer who—

(a) refuses or fails to establish a Grievance Settlement Committee or Consultative Council or a Local Consultative Council (in any case he is required to establish such Local Consultative Council) as required by section 3 or section 4, as the case may be; or

(b) refuses or fails to pay to a member of the Grievance Settlement Committee, Consultative Council or Local Consultative Council, being employees' representative, the travelling and other compensatory allowances payable to him under section 7; or

(c) refuses or fails to submit for registration the regulations referred to in sub-section (1) of section 9 or any modification thereto as required by that section; or

(d) does any act in contravention of—

(i) the regulations referred to in sub-section (1) of section 9; or

(ii) the regulations referred to in section 10 during the period when such regulations are in force in the establishment in relation to which he is the employer; or

(e) refuses or fails to comply with any order of a Grievance Settlement Committee which has become final or any settlement referred to in sub-section (4) of section 12 or any award of an arbitrator or a body of arbitrators or a Board of Arbitrators; or

(f) locks-out any of his employees in contravention of sub-section (2) of section 18,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Any employee who goes on strike in contravention of sub-section (1) of section 18, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

20. (1) No court shall take cognizance of any offence punishable under this Act or the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

Cogni-
zance
of off-
ences.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence under this Act.

21. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by com-
panies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER V

MISCELLANEOUS

Recovery
of money
due from
employer.

22. Where any money is due to any employee under any order of any Grievance Settlement Committee, or settlement referred to in sub-section (4) of section 12 or award of any arbitrator, body of arbitrators or Board of Arbitrators, the employee himself or any other person authorised by him in writing in this behalf or, in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that the money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Modifica-
tion of
provisions
of Act
in their
application
to certain
establish-
ments.

23. Where in any establishment, any joint consultative machinery consisting of representatives of employees and employers or any other body consisting of one or more persons (by whatever name called) has been set up for the purpose of settling individual employment disputes or employment disputes therein and the appropriate Government is satisfied that the functioning of such joint consultative machinery or other body has been beneficial to the employees employed in such establishment the appropriate Government may, by notification in the Official Gazette, direct that the provisions of this Act shall not apply in relation to such establishment, or shall apply in relation to such establishment with such modifications as may be specified in such notification.

Protec-
tion of
action
taken
under
the Act.

24. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

Effect
of con-
tract or
laws
in con-
sistent
with
this
Act.

25. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any contract of service or any other law.

Delegation
of powers.

26. The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules or regulations made thereunder shall, in relation to such matters and

subject to such conditions, if any, as may be specified in the direction, be exercisable also,—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

27. Nothing in this Act shall apply to any establishment owned or managed by any organisation exclusively engaged in any charitable or philanthropic service.

Act not to apply to certain establishments.

28. (1) The appropriate Government may by notification in the Official Gazette and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the authority which is the employer in relation to an establishment under the control of any department of the Central or State Government, under sub-clause (a) of clause (4) of section 2;

(b) the manner of choosing the members, of the Grievance Settlement Committee, Consultative Council or Local Consultative Council, representing employees, under sub-section (3) of section 3 or sub-section (7) of section 4, as the case may be;

(c) the procedure of the Consultative Council and Local Consultative Council, under sub-section (9) of section 4;

(d) the term of office of the members of the Grievance Settlement Committee, Consultative Council or Local Consultative Council, under section 5;

(e) the manner of ascertaining the support for any organisation of employees under sub-section (1) of section 6;

(f) travelling and other compensatory allowances payable to the members of the Grievance Settlement Committee, Consultative Council or Local Consultative Council, being employees' representatives, in relation to any duty performed by them as such members, under section 7;

(g) the manner of registering regulations, under sub-section (2) of section 9, and the fees payable for obtaining copies of regulations, under sub-section (4) of that section;

(h) the time within which a reference for arbitration may be made by the parties to an individual employment dispute, under sub-section (4) of section 11;

(i) the employment disputes which shall be referred to the Local Consultative Council in the first instance, under sub-section (1) of section 12;

(j) the period for settling any employment dispute by a Local Consultative Council, under sub-section (3) of section 12;

(k) the remuneration payable to an arbitrator or a member of a body of arbitrators or a Board of Arbitrators or assessor, under section 13;

(l) the powers of the arbitrator, body of arbitrators or a Board of Arbitrators under clause (a) of section 15;

(m) any other matter which has to be, or may be, provided for by rules under this Act.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

SCHEDULE I

[See section 2(5)]

MATTERS, ANY DISPUTE OR DIFFERENCE IN RESPECT OF WHICH BETWEEN
ANY EMPLOYEE AND HIS EMPLOYER IS AN EMPLOYMENT DISPUTE

- (1) Wages, including the period and mode of payment.
- (2) Compensatory and other allowances.
- (3) Hours of work and rest intervals.
- (4) Leave with wages and holidays.
- (5) Rationalisation.
- (6) Medical benefits.
- (7) Superannuation benefits.
- (8) Canteens, rest rooms, first aid facilities and other facilities to be provided to employees.
- (9) Rules of discipline.

SCHEDULE II

[See section 2(8)]

MATTERS, ANY DISPUTE OR DIFFERENCE IN RESPECT OF WHICH BETWEEN
ANY EMPLOYEE AND HIS EMPLOYER IS AN INDIVIDUAL
EMPLOYMENT DISPUTE

- (1) Termination of employment of any employee whether by way of discharge, dismissal or retrenchment or otherwise.
- (2) Suspension of an employee.
- (3) Money due from the employer to an employee, or the amount at which a benefit, which is capable of being computed in terms of money, is to be computed.
- (4) Any matter not referred to in Schedule I or this Schedule, relating to the terms of employment or the conditions of labour of any employee.

STATEMENT OF OBJECTS AND REASONS

It has been urged, both inside and outside Parliament, that employees of educational, scientific, research and training institutions should be given protection on the lines of the protection available to workmen under the Industrial Disputes Act, 1947.

2. In the Committee on comprehensive Industrial Relations Law and Composition of Indian Labour Conference, there was unanimity about the need for giving statutory protection to all employees from arbitrary action of employers. However, it was also felt that the machinery and the provisions need not be the same for employees in all kinds of undertakings or institutions. Different variants of the machinery as well as the procedure could either be incorporated in the comprehensive law itself or a separate law may be enacted to cover employees in such undertakings or institutions as did not come within the purview of 'industry'.

3. In its judgment of February, 1978 in *Bangalore Water Supply and Sewerage Board vs. A Rajappa and others*, the Supreme Court held that educational institutions and research institutes which satisfied the tests laid down by it would come within the definition of the term 'industry' in the Industrial Disputes Act, 1947. The Supreme Court also overruled its earlier judgment in the *Management of Safdarjang Hospital vs. Kuldip Singh Sethi* and held that all hospitals would come within the purview of that Act. Prior to this judgment the provisions of the Industrial Disputes Act were held to apply to all hospitals. By that judgment, hospitals run by Government and on charitable lines were excluded from the purview of that Act. Hospitals and nursing homes run as a business in a commercial way, however, continued to be covered by that Act.

4. Since hospitals, educational, scientific, research and training institutions have special and distinct characteristics of their own and an atmosphere that eschews strife and conflicts has to be maintained therein, these institutions have been excluded from the purview of the Industrial Relations Bill. But the employees engaged in these establishments also need protection and a machinery for the resolution of their individual and collective employment disputes has to be provided for. The Bill seeks to achieve this objective.

5. The Bill applies to hospitals, educational, scientific, research and training institutions, in which 20 or more persons are employed or were employed on any day of the preceding twelve months. Employees drawing wages more than Rs. 1000 per mensem would not be covered by the Bill. Certain other categories of employees are also excluded.

6. The Bill enjoins on an employer to constitute, within a specified period, a Grievance Settlement Committee for the resolution of individual employment disputes and a Consultative Council and a Local Consultative Council for the resolution of employment disputes of a collective nature. It also provides for the arbitration of disputes not resolved by the Grievance Settlement Committee or the Local Consultative Council or Consultative Council.

7. There is provision for the recognition of an association of employees which has the support of the majority of employees in an establishment. The representatives of employees on the Grievance Settlement Committee, Local Consultative Council and Consultative Council would be nominees of a recognised association. No office-bearer of a recognised association of employees could be a person who is not employed in an establishment. The Bill provides for an effective machinery for the resolution of individual and collective employment disputes. Lock-outs or strikes would, therefore, be redundant and they are proposed to be prohibited.

8. Where any matter is referred for arbitration under the provisions of the Bill the arbitration award will have to be given within a specified period. The employers as well as the employees would have the right to choose arbitrators either from the panels maintained by the appropriate Government or from outside. Matters which would constitute individual employment disputes include termination of employment of any employee whether by way of discharge, dismissal or retrenchment or otherwise, suspension and computation of moneys due from the employer to an employee. Matters which would be employment disputes of a collective nature include wages and allowances, hours of work, leave with wages and holidays, rationalisation, medical benefits, superannuation benefits and rules of discipline.

9. The Central Government would be the appropriate Government in respect of establishments which are under its control or those which have branches or units or offices in two or more States; in respect of others the State Government would be the appropriate Government.

10. Appropriate penal provisions are also provided in the Bill for ensuring strict compliance of the law.

NEW DELHI;
The 25th August, 1978.

RAVINDRA VARMA.

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the payment of travelling and other compensatory allowances to members of the Grievance Settlement Committee, Consultative Council and Local Consultative Council. Such allowances are to be paid by the employer at such rates as may be prescribed by rules. Where the Central Government is the employer in relation to the establishments covered by the Bill, such allowances will have to be met from the Consolidated Fund of India and they will be of a recurring nature. It is not possible to estimate the expenditure that may have to be incurred out of the Consolidated Fund of India towards the payment of such allowances.

2. Clause 13 of the Bill provides for the remuneration payable by the parties to an arbitrator. Where the Central Government is the employer in relation to any establishment to which the provisions of the Bill are applicable and any individual employment dispute or employment dispute concerning that establishment is referred for arbitration, it may have to pay the arbitrator's fee. As the arbitrator's fee will have to be paid only if any such dispute is referred for arbitration and the number of such disputes cannot be estimated at present it is not possible to give an estimate of the recurring expenditure that may have to be incurred.

3. There will be no non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the appropriate Government to direct, by notification in the Official Gazette, that the provisions of the Bill shall not apply in relation to any establishment, or shall apply in relation to such establishment with such modifications as may be specified in such notification, where any joint consultative machinery consisting of representatives of employees and employer or any other body has been set up in such establishment for the purpose of settling individual employment disputes or employment disputes and the appropriate Government is satisfied that the functioning of such joint consultative machinery or other body has been beneficial to the employees employed in such establishment.

2. Sub-clause (1) of clause 27 of the Bill empowers the appropriate Government to make rules for the purpose of giving effect to the provisions of the Bill. The rules are to be made by notification in the Official Gazette and are subject to the conditions of previous publication. Sub-clause (2) of that clause enumerates the matters in regard to which such rules may be made. The matters in regard to which such rules may be made relate, *inter alia*, to—

(i) the manner of choosing the members of the Grievance Settlement Committee, Consultative Council or Local Consultative Council, representing employees;

(ii) the procedure of the Consultative Council and Local Consultative Council;

(iii) the terms of office of the members of the Grievance Settlement Committee, Consultative Council or Local Consultative Council;

(iv) the manner of ascertaining the support for any organisation of employees; and

(v) the remuneration payable to an arbitrator or a member of a body of arbitrators or Board of Arbitrators.

3. Every rule made by the State Government under clause 27 is required to be laid before the State Legislature and every rule made by the Central Government under that clause is required to be laid before the Parliament.

4. The delegation of legislative power under the aforementioned provisions relates to matters of procedure or administrative detail or to matters in respect of which it is not practicable to make detailed provisions. Hence the delegation of legislative power is of a normal character.

BILL No. 143 of 1978

A Bill to provide for the security of employment to managerial employees, the recovery of amounts payable to such employees by their employers and for matters connected therewith.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employment Security and Miscellaneous Provisions (Managerial Employees) Act, 1978.

Short
title,
extent
and com-
mence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(1) “appropriate Government” means,—

(a) in relation to any establishment referred to in sub-clause (i) of clause (1) of section 2 of the Industrial Relations Act, 1978 or in sub-clause (a) of clause (1) of section 2 of the Hospitals and Educational Institutions (Conditions of Service of Employees and Settlement of Employment Disputes) Act, 1978, the Central Government; and

(b) in relation to any other establishment, the State Government;

(2) "employer" means,—

(a) in relation to an establishment under the control of any department of the Central Government or a State Government, the authority prescribed in that behalf by the Government concerned or, where no authority is prescribed, the head of the department;

(b) in relation to any establishment under the control of any local authority, the chief executive officer of that local authority;

(3) "employment dispute" means any dispute or difference between a managerial employee and his employer—

(a) relating to, or arising from, the termination of employment of such managerial employee; or

(b) relating to, or arising from, the reduction in rank of, or in the salary or allowances payable to, a managerial employee; or

(c) relating to any money due to such managerial employee from his employer or as to the amount at which a benefit to which such employee is entitled and which is capable of being computed in terms of money, is to be computed;

(4) "managerial employee" means any person (including a trainee or probationer) employed in any establishment for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to any dispute relating to the termination of employment (whether by way of punishment or otherwise) of a managerial employee, includes any person whose employment has been so terminated but does not include any such person—

(a) who is an employee as defined in clause (9) of section 2 of the Industrial Relations Act, 1978;

(b) who is an employee as defined in clause (3) of section 2 of the Hospitals and Educational Institutions (Conditions of Service of Employees and Settlement of Employment Disputes) Act, 1978;

(c) who has not actually worked under the employer concerned for two hundred days in the preceding twelve calendar months;

(d) who holds, where such establishment is a company, the office of director or secretary;

(e) who is the chief executive officer (by whatever name called) in relation to the establishment;

(f) who is in charge of a divisional, regional or other like office of any industrial or commercial organisation and who is authorised to exercise substantial powers of management in relation to such office;

(g) who is appointed to the public services or posts in connection with the affairs of the Union or of any State; or

(h) who is employed in domestic service.

Explanation 1.—For the purposes of sub-clause (c), the number of days on which a managerial employee has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or any law applicable to the establishment;

(ii) he has been on leave on full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.

Explanation 2.—For the purposes of sub-clause (d), the expressions “company”, “director” and “secretary” shall have the meanings respectively assigned to them in sub-section (1) of section 3 and clause (13) and clause (45) of section 2, of the Companies Act, 1956.

1 of 1956.

Explanation 3.—For the purposes of sub-clause (f), a person shall be deemed to be authorised to exercise substantial powers of management in relation to a divisional, regional or other like office of any industrial or commercial organisation—

(i) if he is required, in the performance of his duties, ordinarily to participate in evolving the policy of the employer in relation to such organisation, relating to matters like purchase, sales, marketing, production or pricing of goods or services manufactured, supplied or distributed by such organisation or in relation to the recruitment and promotion of employees or the wage structure of such employees; or

(ii) if he is authorised to take final decision in disciplinary proceedings against any managerial employee;

(5) “prescribed” means prescribed by rules made under this Act.

3. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, contract of service, settlement or arbitration award:

Provided that where under the provisions of such other law or contract of service, settlement or arbitration award a managerial employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the managerial employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

Effect
of laws
inconsis-
tent
with
the Act.

Employment Security Tribunal.

4. (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Employment Security Tribunals for the adjudication of employment disputes.

(2) An Employment Security Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) No person shall be qualified for appointment as the presiding officer of an Employment Security Tribunal unless—

(a) he is, or has been, or is qualified to be appointed as, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(c) he is, or has been, or is qualified to be appointed as, a Tribunal as defined in clause (38) of section 2 of the Industrial Relations Act, 1978; or

(d) he has, in the opinion of the appropriate Government, adequate experience in industrial relations.

(4) The terms and conditions of service of the presiding officer of an Employment Security Tribunal shall be such as may be prescribed.

Employer to make regulations in regard to penalties for misconduct.

5. (1) Every employer in relation to any establishment shall make regulations to provide for the following matters, namely:—

(a) any act or conduct which, in relation to a managerial employee, shall constitute misconduct;

(b) the penalties for such misconduct, including termination of employment or reduction in rank or in salary or allowances;

(c) the authorities to impose such penalties; and

(d) the procedure for enquiry into such misconduct.

(2) Every regulation made under sub-section (1) (including any modification thereto) shall be—

(a) registered in the prescribed manner with such officer as the appropriate Government may, by notification in the Official Gazette, specify in this behalf (hereinafter referred to as the specified officer); and

(b) notified on the notice board of the establishment.

(3) The regulations referred to in sub-section (1) shall be made and submitted to the specified officer for registration under clause (a) of sub-section (2) by the employer in relation to an establishment—

(a) where such establishment is in existence at the commencement of this Act, within a period of six months from such commencement; and

(b) where such establishment comes into existence after the commencement of this Act, within a period of six months from the coming into existence of such establishment,

and every modification to such regulations shall be submitted by the employer to the specified officer for registration under that clause within a period of six months from the date on which such modification is made.

(4) The specified officer shall supply to any managerial employee on a request made therefor by such employee and on payment of such fees as may be prescribed, a certified copy of the regulations made by the employer, under sub-section (1), for the establishment wherein such managerial employee is employed.

6. (1) Notwithstanding anything contained in section 5, the appropriate Government may, by notification in the Official Gazette, make model regulations in respect of the matters referred to in sub-section (1) of that section.

Model
regula-
tions.

(2) The model regulations made under sub-section (1) in regard to any matter shall be deemed to be in force in every establishment in the same manner as regulations made by the employer in relation to such establishment until regulations made by such employer in regard to that matter are registered with the specified officer under sub-section (2) of section 5.

7. (1) The employment of no managerial employee shall be terminated (whether by way of punishment, retrenchment or otherwise) except in accordance with the provisions of this Act.

Termina-
tion of
employ-
ment of
manage-
rial em-
ployee.

(2) Where an employer proposes to terminate the employment of any managerial employee, such employer shall give in the prescribed manner three months' notice to the managerial employee declaring the intention of the employer to terminate the employment of such managerial employee and stating the reasons for such termination:

Provided that no such notice shall be required where such termination is on the ground of misconduct of such managerial employee and after an enquiry into the alleged misconduct in accordance with the regulations made under section 5 or section 6, as the case may be.

(3) Any managerial employee—

(a) who is served with a notice under sub-section (2), declaring the intention to terminate his employment; or

(b) whose employment is terminated on the ground of misconduct,

may, before the expiry of a period of three months from the date of the service on him of the notice referred to in clause (a), or the termination of his employment on the ground of misconduct, represent to the employer against the proposed termination or termination, as the case may be.

(4) Where—

(a) an employer does not communicate his decision on the representation, referred to in sub-section (3), to the managerial employee concerned before the expiry of a period of thirty days from the date on which such representation is made; or

(b) the managerial employee is aggrieved by the decision of the employer on such representation,

such managerial employee may apply to the Employment Security Tribunal within such time and in such manner as may be prescribed to set

aside the notice referred to in sub-section (2) or the termination of his employment on the ground of misconduct, as the case may be.

(5) The Employment Security Tribunal, after giving the managerial employee and the employer a reasonable opportunity of being heard and after holding such enquiry, as it deems fit, shall decide—

(a) where the application is to set aside a notice declaring the intention to terminate the employment of the managerial employee, whether—

(i) the reasons stated in the notice for such proposed termination are true and justify the proposed termination; and

(ii) the proposed termination is in contravention of the contract of employment or any law; or

(b) where the application is to set aside a termination of employment on the ground of misconduct, whether—

(i) the enquiry into the alleged misconduct has been conducted in accordance with the regulations made under section 5 or section 6, as the case may be; and

(ii) the findings of the enquiry justify the termination of employment on the ground of misconduct,

and give its award which shall be final.

Reduction
in rank
or in
salary
or allow-
ances of
mana-
gerial
employee.

8. (1) No employer shall direct the reduction in the rank of, or in the salary or allowances payable to, a managerial employee (whether or not such reduction is by way of punishment) except by an order in writing specifying the reasons for such reduction in rank or in salary or allowances, as the case may be, served on such managerial employee.

(2) The provisions of sub-sections (3), (4) and (5) of section 7 shall, so far as may be, apply in the case of a reduction in the rank of, or in salary or allowances payable to, a managerial employee in the same manner as they apply in the case of the termination of employment of such employee.

Applica-
tion
in res-
pect of
non-pay-
ment of
dues.

9. (1) Any managerial employee may apply to the Employment Security Tribunal in such manner as may be prescribed,—

(a) for an award for any money due to him from his employer in the course of his employment; or

(b) for the determination of the amount at which a benefit to which he is entitled in the course of his employment and which is capable of being computed in terms of money, is to be computed.

(2) The Employment Security Tribunal shall, after giving the managerial employee and the employer a reasonable opportunity of being heard and after making such enquiry, as it deems fit, give its award which shall be final.

Proce-
dure and
powers
of the
Employ-
ment Se-
curity
Tribunal.

10. (1) Subject to any rules that may be made under this Act, the Employment Security Tribunal shall have power to regulate its own procedure.

(2) The Employment Security Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) issuing commissions for the examination of witnesses or documents; and
- (d) any other matter which may be prescribed.

(3) The Employment Security Tribunal shall give its award on an application made to it under sub-section (4) of section 7 or sub-section (2) of section 8, read with sub-section (4) of section 7, or sub-section (1) of section 9 within six months of the date of receipt of such application.

11. (1) It shall be lawful for the Employment Security Tribunal on an application made therefor to grant, by order, to any managerial employee, being a party to any proceeding in relation to any employment dispute pending before it, such interim reliefs (whether subject to any conditions or not), including stay of termination of employment of such managerial employee or issue of injunction against such termination or of direction to the employer to continue to pay to the managerial employee the whole or part of his salary and allowances or to deposit within such period as may be specified in the order such salary and allowances to the credit of the Tribunal for the purpose of paying the same to the managerial employee if the Employment Security Tribunal, by its award, finds that such managerial employee is entitled to it.

Power
to grant
interim
reliefs.

(2) Where any salary or allowances of any managerial employee is directed to be deposited to the credit of the Employment Security Tribunal under sub-section (1) and the Employment Security Tribunal, by its award, finds that such managerial employee is not entitled to such salary and allowances, it shall return the amount so deposited to the employer concerned.

(3) The Employment Security Tribunal shall not grant any interim relief under sub-section (1) unless all the parties to the proceeding have been served with a notice of the application for such interim relief and have been given a reasonable opportunity of being heard:

Provided that the Employment Security Tribunal may, having regard to the nature of the interim relief sought and the circumstances of the case pass appropriate orders granting such interim relief as it deems just and proper in the circumstances of the case before the notice referred to in this sub-section is served on the parties to the proceeding:

Provided further that where the Employment Security Tribunal makes any order under the preceding proviso, it shall record the reasons for making the order before complying with the requirements of notice of the application to the parties to the proceeding and giving them a reasonable opportunity of being heard.

12. Every award of the Employment Security Tribunal in any proceeding under this Act and every order of that Tribunal under section 11 shall be binding on—

Persons
on whom
awards
are
binding.

- (a) the parties to the proceeding; and
- (b) in the case of a party to the proceeding, being an employer, his heirs, successors or assigns in respect of the establishment to which such proceeding relates.

Recovery
of money
due under
an award.

13. Where any money is due to any managerial employee under any award of an Employment Security Tribunal under this Act or any order of that Tribunal under section 11, the managerial employee or any other person authorised by him in writing in this behalf or, in the case of the death of the managerial employee, his assignee or heirs may without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that the money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the managerial employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within such period.

Penalties.

14. Any employer who—

(a) refuses or fails to submit for registration the regulations referred to in sub-section (1) of section 5 or any modification thereto as required by that section; or

(b) terminates the employment of any employed person in contravention of the provisions of section 7; or

(c) refuses or fails to comply with the award of an Employment Security Tribunal under section 7 or section 8 or section 9 or any order made by it under section 11,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Offences
by com-
panies.

15. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Protection of action taken under the Act.

17. (1) The appropriate Government may, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the authority which is the employer in relation to an establishment under the control of any department of the Central or State Government, under clause (2) of section 2;

(b) the terms and conditions of service of the presiding officer of an Employment Security Tribunal under sub-section (4) of section 4;

(c) the manner of registering the regulations referred to in sub-section (1) of section 5, under sub-section (2) of that section, and the fees payable for obtaining certified copies of such regulations, under sub-section (4) of that section;

(d) the manner of service on the managerial employee of the notice referred to in sub-section (2) of section 7;

(e) the time within which and the manner in which an application may be made to the Employment Security Tribunal to set aside the notice referred to in sub-section (2) of section 7 or the termination of employment of the managerial employee on the ground of misconduct, under sub-section (4) of that section;

(f) the manner of applying to the Employment Security Tribunal under sub-section (1) of section 9 for the purposes referred to therein;

(g) the procedure of the Employment Security Tribunal, under sub-section (1) of section 10, and the powers of the Employment Security Tribunal, under clause (d) of sub-section (2) of that section;

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

At present there is no law relating to security of employment of persons not covered by the Industrial Disputes Act, 1947.

2. This question came up for consideration on a number of occasions. In 1969, the Gokhale Commission urged the need for providing protection to such employees. The Committee on Comprehensive Industrial Relations Law and Composition of Indian Labour Conference also considered this question recently. The members of the Committee generally felt that there should be a simple legal provision to ensure security of employment for employees not covered by the Industrial Relations Law. The Bill seeks to achieve this objective.

3. Only employees who have actually worked under the employer concerned for two hundred days in the preceding twelve calendar months would be entitled to the benefits conferred by the provisions of the Bill. Employees covered by the Industrial Relations Bill, 1978, and the Hospitals and Educational Institutions (Conditions of Service of Employees and Settlement of Employment Disputes) Bill, 1978, and persons who occupy top management positions would not be covered by the provisions of the Bill.

4. An employer is required to make regulations regarding what act or conduct of an employee would constitute misconduct, the penalties therefor and the procedure for enquiry into such misconduct.

5. The employment of no employee to whom the provisions of the Bill apply can be terminated (whether by way of punishment or not) except in accordance with the provisions of the Bill. Where the termination of employment is not by way of misconduct, the employer has to give the employee three months' notice declaring the intention of the employer to terminate the employment of that employee and stating the reasons for such termination. An employee who is served with a notice declaring the intention to terminate his employment or whose employment is terminated for misconduct would be entitled to represent to the employer against such termination. If he is aggrieved by the decision of the employer, he could approach the Employment Security Tribunal for setting aside the notice of termination of employment or termination, as the case may be.

6. Provisions have been made in the Bill to enable an employee, to whom the provisions of the Bill apply, to approach the Employment Security Tribunal for reliefs if the employer effects reduction in his rank or in his salary or allowances. He can also approach the Employment Security Tribunal for the recovery of amounts due to him from the employer.

NEW DELHI;

RAVINDRA VARMA.

The 26th August, 1978.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the constitution of one or more Employment Security Tribunals by the appropriate Government for the adjudication of employment disputes. To begin with, Central Government may have to constitute three Employment Security Tribunals with requisite staff. The annual recurring expenditure for this would be of the order of Rs. 6 lakhs and the non-recurring expenditure would be of the order of Rs. 4.50 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 17 of the Bill empowers the appropriate Government to make rules, by notification in the Official Gazette, for the purpose of giving effect to the provisions of the Bill.

Sub-clause (2) of that clause enumerates the matters in regard to which such rules may be made. The matters in regard to which such rules may be made relate, *inter alia*, to—

- (i) the authority which is the employer in relation to an establishment under the control of any department of the Central or State Government;
- (ii) the terms and conditions of service of the presiding officer of an Employment Security Tribunal;
- (iii) the manner of registering regulations referred to in sub-section (1) of section 5 and the fees payable for obtaining certified copies of such regulations;
- (iv) the manner of service on the managerial employee of the notice of termination of employment; and
- (v) the manner of applying to the Employment Security Tribunal to set aside the notice declaring the intention of the employer to terminate his employment.

2. Every rule made by the State Government under clause 17 is required to be laid before the State Legislature and every rule made by the Central Government under that clause is required to be laid before the Parliament.

3. The delegation of legislative power under the above mentioned provisions relates to matters of procedure or administrative detail or to matters in respect of which it is not practicable to make detailed provisions. Hence the delegation of legislative power is of a normal character.

AVTAR SINGH RIKHY,
Secretary.